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BURN'S

JUSTICE OF THE PEACE

AND

Parish Officer.

VOL. II.

CORN——EXTORTION.

BURN'S

JUSTICE OF THE PEACE

AND

Parish Officer.

THE TWENTY-NINTH EDITION,

CORRECTED AND GREATLY ENLARGED,

CONTAINING THE

CASES & STATUTES TO 7 & 8 VICT., INCLUSIVE,

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THE TITLE "POOR"

BY MR. COMMISSIONER BERE,

OF THE EXETER DISTRICT COURT OF BANKRUPTCY;

THE REST OF THE WORK

BY THOMAS CHITTY, ESQ.,

OF THE INNER TEMPLE.

IN SIX VOLUMES.

VOL. II.

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1845.

3. *Importation, &c.*

5 Vict c. 14.

ford and Cambridge to appoint and remove inspectors of corn returns for the said city and town.

as heretofore, be appointed and removed by the chancellors, masters, and scholars of the respective Universities of Oxford and Cambridge, and should perform, as heretofore, the duties of their respective offices, and that the chancellors, masters, and scholars of the said respective Universities should have power to suspend such inspectors respectively as hereinafter is mentioned; be it therefore enacted, That the chancellors, masters, and scholars of the Universities of Oxford and Cambridge respectively shall and they are hereby respectively authorized and required to nominate and appoint some fit and proper person to be the inspector of corn returns for the city of Oxford and the town of Cambridge respectively, and it shall be lawful for the said chancellors, masters, and scholars respectively, from time to time as occasion may require, upon any misbehaviour or neglect of duty of any such inspector, or for any other good and sufficient cause to them respectively appearing, to remove or suspend any such inspector from his office; and upon the death, resignation, removal, or suspension of any such inspector of corn returns for the city of Oxford or town of Cambridge it shall be lawful for the said respective chancellors, masters, and scholars, and they are hereby authorized and required, respectively to nominate and appoint some fit and proper person to succeed to the said office vacant by such death, resignation, or removal, or to hold the same during the continuance of such suspension (as the case may be)."

No person dealing in corn, flour, or malt to be appointed inspector or deputy inspector of corn returns for the cities of London or Oxford or town of Cambridge

15. "That no person shall be eligible or shall be appointed to the office of inspector or deputy inspector of corn returns for the city of London, or to the office of inspector of corn returns for the city of Oxford or the town of Cambridge, who, within six months next preceding the time of any such appointment, shall have been engaged in trade or business as a miller, maltster, or corn factor, or who during that period shall, as a merchant, clerk, agent, or otherwise, have bought corn for sale, or for the sale of meal, flour, malt, or bread made or to be made thereof; and if any inspector or deputy inspector of corn returns for the city of London, or any inspector of corn returns for the city of Oxford or the town of Cambridge, shall, during his continuance in such his office, engage in trade or business as a miller, maltster, or corn factor, or shall, as a merchant, clerk, agent, or otherwise, buy corn for sale, or for the sale of meal, flour, malt, or bread made or to be made thereof, he shall in manner aforesaid be removed from such his office, and from and after the time of such removal shall become incapable of acting as inspector of corn returns under this act."

Appointments of inspectors for London, Oxford, and Cambridge to be enrolled.

16. "That every nomination and appointment so to be made as aforesaid of any inspector of corn returns for the city of London, or of any inspector of corn returns for the city of Oxford or the town of Cambridge, shall be enrolled at the next sessions of the peace to be holden in and for such city or town; and the said enrolment, or a copy thereof, certified under the hand of the clerk of the peace for the said city of London, or under the hand of the town clerk of the said city of Oxford, or of the town clerk of the said town of Cambridge, as the case may be, to be a true copy, shall, for all intents and purposes, be and be deemed and taken to be good and conclusive evidence of any such appointment as aforesaid having been duly made."

Dealers in corn in London to deliver in a declaration to the lord mayor, &c

17. "That every person who shall carry on trade or business in the city of London, or within five miles from the Royal Exchange in the said city, as a corn factor, or as an agent employed in the sale of British corn, and every person who shall sell any British corn within the present Corn Exchange in Mark Lane in the said city, or within any other building or place which now is or may hereafter be used within the city of London, or within five miles from the Royal Exchange in the said city, for such and the like purposes for which the said Corn Exchange in Mark Lane hath been and is used, shall, before he or they shall carry on such trade or business, or sell any corn in manner

aforesaid, make and deliver to the Lord Mayor or one of the aldermen of the city of London a declaration in the following words; (that is to say),

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Form of declaration.

"*I, A. B., do declare, That the returns to be by me made, conformably to an act passed in the fifth year of the reign of her Majesty Queen Victoria, intituled* [here set forth the title of this act], *of the quantities and prices of British corn which henceforth shall be by or for me sold or delivered, shall, to the best of my knowledge and belief, contain the whole quantity, and no more, of the corn* bonâ fide *sold and delivered by or for me within the periods to which such returns respectively shall refer, with the prices of such corn, and the names of the buyers respectively, and of the persons for whom such corn shall have been sold by me respectively, and to the best of my judgment the said return shall in all respects be conformable to the provisions of the said act.*"

"Which declaration shall be in writing, and shall be subscribed with the hand of the person so making the same; and the lord mayor or such alderman as aforesaid of the city of London for the time being shall and he is hereby required to deliver a certificate thereof, under his hand, to the inspector of corn returns for the city of London, to be by him registered in a book to be by him provided and kept for that purpose."

Dealers in corn to make weekly returns to corn inspector.

18. "That every such corn factor and other person as aforesaid who is hereinbefore required to make and who shall have made such declaration as aforesaid shall and he or she is hereby required to return or cause to be returned, on Wednesday in each and every week, to the inspector of corn returns for the city of London, an account in writing, signed with his or her own name, or the name of his or her agent duly authorized in that behalf, of the quantities of each respective sort of British corn by him or her sold during the week ending on and including the next preceding Tuesday, with the prices thereof, and the amount of every parcel, with the total quantity and value of each sort of corn, and by what measure or weight the same was sold, and the names of the buyers thereof, and of the persons for and on behalf of whom such corn was sold; and it shall be lawful for any such inspector of corn returns to deliver to any person making or tendering any such returns a notice in writing requiring him or her to declare and set forth therein where and by whom and in what manner any such British corn was delivered to the purchaser or purchasers thereof; and every person to whom any such notice shall be so delivered shall and he or she is hereby required to comply therewith, and to declare and set forth in such his or her return, or in a separate statement in writing, the several particulars aforesaid."

The present comptroller, deputy comptroller, and inspector of corn returns for London, Oxford, and Cambridge to continue in office.

19. "That the comptroller and deputy comptroller of corn returns, and the inspectors of corn returns for the city of London, the city of Oxford, and the town of Cambridge respectively, who at or immediately before the passing of this act shall respectively hold such offices or appointments under and by virtue of the said recited act of the ninth year of the reign of his late Majesty King George the Fourth, shall and they are hereby authorized and required respectively, without further appointment, to hold and forthwith to act in such their offices or appointments under and by virtue of this present act, and to discharge the several duties of and belonging to such their former offices or appointments, in such and the same manner, and as fully and effectually, to all intents and purposes, as if they had been respectively appointed to such their offices or appointments as aforesaid under and by virtue of this present act; and each and every inspector of corn returns for any city or town, other than the city of London, the city of Oxford, and the town of Cambridge, who at or immediately before the passing of this act shall hold such office or appointment under or by virtue of the said recited act of the ninth year of the reign of his late Majesty King

The appointments of the other inspectors of returns to cease on 24th June next after passing of act.

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George the Fourth, shall and they are hereby respectively authorized to continue to hold their respective offices or appointments until the twenty-fourth day of June next after the passing of this act, and are hereby authorized and required to perform the several duties hereinafter assigned to them: Provided nevertheless, that, except so far as respects the inspector of corn returns for the city of London, the city of Oxford, and the town of Cambridge, and such other inspectors of corn returns as shall be continued in office by virtue of the warrant of the commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, as hereinafter is provided, the office or appointment of every inspector of corn returns, who at or immediately before the passing of this act shall hold such office or appointment, shall on the said twenty-fourth day of June next after the passing of this act cease and determine."

In other cities and towns than London, Oxford, and Cambridge, officers of excise to act as corn inspectors, and attend at places appointed.

20. "That in the several cities and towns enumerated in the said schedule hereunto annexed, except the city of London, the city of Oxford, and the town of Cambridge, and except the cities or towns in which the inspectors of corn returns, appointed under or by virtue of the said recited act of the ninth year of the reign of his late Majesty King George the Fourth, shall for the time being continue to hold their respective offices under the provisions of this act, the duties of inspector of corn returns shall be performed as hereinafter is mentioned by the officers of excise, under the orders and directions of the commissioners of excise; and in order thereto the commissioners of excise shall cause a fit and convenient place to be appointed, such place to be varied from time to time as the said commissioners may see occasion, at which the accounts by this act required to be returned by persons purchasing corn within such cities and towns respectively shall be delivered, and shall cause an officer of excise to attend at such place on the days on which such accounts are required to be returned, for the purpose of receiving the same; and every officer of excise attending at such place and receiving such returns shall be deemed and taken to be an inspector of corn returns under the provisions of this act."

Commissioners of excise to make known the place to be appointed for delivering returns of corn purchased.

21. "That the commissioners of excise shall as soon as such place for receiving such returns shall have been fixed and appointed in any such city or town as aforesaid, cause the same to be made known by advertisement in the London Gazette and in some newspaper circulating within the city or town, and shall also cause a board to be affixed in the market house, or, if there shall be no market house, in some conspicuous place near to the place where the corn market is usually held in such city or town, setting forth the place at which such accounts of corn bought within the city or town are to be delivered; and any person who shall wilfully and maliciously remove, deface, obliterate, or injure any such board, or the writing thereon, or any part thereof, shall for each such his offence forfeit and pay a sum not exceeding five pounds."

Inspectors of corn returns may continue to hold their offices by warrant of the commissioners of the Treasury.

22. "That it shall be lawful for the commissioners of her Majesty's Treasury, or any three or more of them, by any warrant or warrants under the hands of them or any three or more of them, to be signed before the twenty-fourth day of June next after the passing of this act, to order and direct that the person who at or immediately before the time of the passing of this act shall hold the office of inspector of corn returns in any city or town named in such order, other than the city of London, the city of Oxford, and the town of Cambridge, under or by virtue of the said recited act of the ninth year of his late Majesty King George the Fourth, shall continue to hold such office, and such person shall accordingly be inspector of corn returns for such city or town, under this act, until he shall die or resign, or until the determination of his office or appointment as hereinafter is mentioned, and shall, as respects the city or town for which he is so continued as inspector, perform, under the orders and directions of the commissioners

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three or more of the commissioners of her Majesty's Treasury for the time being, by warrant under their hands, to order and direct that such annual compensation or allowance, not exceeding in any case the annual salary of the office in respect of which such compensation or allowance is granted, as to them in their discretion shall seem just and reasonable, having due regard to the length of service and conduct of the parties, shall be made to the several persons who at or immediately before the time of the passing of this act shall respectively hold offices or appointments of inspectors of corn returns for any of the cities or towns aforesaid, other than the city of London, the city of Oxford, and the town of Cambridge, for any loss of salary attached to such offices or appointments which they may respectively sustain by reason of the determination of their respective offices or appointments by the provisions of this act; and such compensation or allowance shall be issued and paid to the party to whom such compensation shall be made, at such times and in such manner as in such warrant shall be directed, by the collector or the chief officer of the customs or of the excise in or for the city or town for which such party shall hold the office of inspector of corn returns at the time of the passing of this act: Provided always, that an account of such compensations shall, within fourteen days next after the same shall have been so granted, be laid before the Commons House of Parliament, if Parliament shall be then assembled, or if Parliament shall then not be assembled, then within fourteen days after the meeting of Parliament next following."

Such compensation to be paid by the collectors of customs or excise.

Account of such compensations to be laid before the House of Commons.

39. "That if any person who is hereby required to make and deliver the declaration or declarations hereinbefore particularly mentioned and set forth, or either of them, shall not make and deliver such declaration or declarations at the time and in the form and manner and to the person or persons hereinbefore directed and prescribed in that behalf, every person so offending shall forfeit and pay a sum not exceeding twenty pounds for each and every calendar month during which he shall neglect or delay to make and deliver any such declaration; and if any person who is hereinbefore required to make any return to the inspector of corn returns for the city of London, or the city of Oxford, or the town of Cambridge, or to any officer of excise acting as inspector as aforesaid, or to any such continuing inspector of corn returns as aforesaid, shall not make such returns to such inspector or officer at the time and in the form and manner hereinbefore directed and prescribed, every such offender shall for such his offence forfeit and pay a sum not exceeding twenty pounds." [See *ante*, sect. 25, and note.]

Penalty on corn dealers for not making declarations or returns

Returns.

40. "That all and every the penalties aforesaid shall and may be prosecuted, sued for, and recovered, by and to the use of any person who will sue for the same, before any two justices of the peace acting in and for the city, town, county, riding, or division within which the offence shall have been committed; and upon conviction of any such offender before any such justices of the peace, either by the confession of the party offending or by the oath of any credible witness or witnesses (which oath such justices are hereby authorized to administer), the amount of such penalties and forfeitures shall be levied, together with the costs attending the information and conviction, to be assessed and allowed by such justices, by distress and sale of the goods and chattels of the party or parties offending, by warrant under the hands and seals of such justices (which warrant such justices are hereby empowered and required to grant); and the overplus (if any) after such penalties, forfeitures, and fines, and the charges of such distress and sale are deducted, shall be returned, upon demand, unto the owner or owners of such goods and chattels; and in case such fines, penalties, and forfei-

Recovery and application of penalties

Distress (a).

(a) See "Distress under Justice's Warrant." Vol. II.

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tures shall not be forthwith paid upon conviction, then it shall be lawful for such justices to order the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security, to the satisfaction of such justices, for his or their appearance before such justices on such day or days as shall be appointed for the return of such warrant of distress, such day or days not being more than seven days from the time of taking any such security, and which security the said justices are hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such justices of the peace as aforesaid, and they are hereby authorized and required, by warrant or warrants under their hands and seals, to cause such offender or offenders to be committed to the common gaol or house of correction of the city, town, county, riding, or division where the offender shall be or reside, there to remain, without bail or mainprize, for any term not exceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied."

Commitment (a).

Penalty on witnesses not attending when required.

41. "That if any person who shall be summoned as a witness to give evidence before any justices of the peace, touching any matter of fact contained in any information or complaint for any offence against this act, either on the part of the prosecutor or of the person or persons accused, shall, after a reasonable sum of money for his or her charges and expenses shall have been paid or been tendered to him or her, refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his, her, or their neglect, or appearing, shall refuse to be examined on oath and give evidence before such justices of the peace, then and in either of such cases such person shall forfeit for every such offence any sum not exceeding ten pounds, to be recovered in the manner hereinbefore provided for the recovery of the several penalties aforesaid."

Making false returns, a misdemeanor.

42. "That if any person shall make any false and fraudulent statement in any such return as he is hereinbefore directed and required to make, or shall falsely and wilfully include, or procure or cause to be included, in any such return, any British corn which was not truly and *bonâ fide* sold or bought to, by, or on behalf of the person or persons in any such return mentioned in that behalf, in the quantity and for the price therein stated and set forth, every such offender shall be and be deemed guilty of a misdemeanor."

Act not to affect the practice of measuring or privileges of London.

43. "That nothing in this act contained shall extend to alter the present practice of measuring corn, or any of the articles aforesaid, to be shipped from or to be landed in the port of London, but that the same shall be measured by the sworn meters appointed for that purpose, by whose certificate the searchers or other proper officers of her Majesty's customs are hereby empowered and required to certify the quantity of corn or other articles as aforesaid so shipped or landed; and that nothing in this act contained shall extend to lessen or take away the rights and privileges of or the tolls or duties due and payable to the mayor and commonalty and citizens of the city of London, or to the mayor of the said city for the time being, or to take away the privileges of any persons lawfully deriving title from or under them."

Limitation of actions (b)

44. "That if any action or suit shall be brought or commenced against any person or persons for any thing by him, her, or them done

(a) See "Commitment," Vol. I.

(b) As to clauses of this nature, in general, see "Justices," Vol. III.

by virtue or in pursuance of this act, such action or suit shall be commenced within three months next after the matter or thing done, and shall be laid in the proper county; and the defendant or defendants in such action or suit shall and may plead the general issue, and give this act and the special matter in evidence, at any trial to be had thereupon; and if afterwards a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall discontinue his, her, or their action or actions, or be nonsuited, or judgment shall be given against him, her, or them, upon demurrer or otherwise, then such defendant or defendants shall have treble costs awarded to him, her, or them against such plaintiff or plaintiffs."

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TABLE OF DUTIES TO WHICH THE 5 VICT. CAP. 14, REFERS.

If imported from any Foreign Country:

WHEAT—

	£	s.	d.
Whenever the average price of wheat, made up and published in the manner required by law, shall be for every quarter under 51*s*., the duty shall be for every quarter	1	0	0
51*s*. and under 52*s*.	0	19	0
52*s*. and under 55*s*.	0	18	0
55*s*. and under 56*s*.	0	17	0
56*s*. and under 57*s*.	0	16	0
57*s*. and under 58*s*.	0	15	0
58*s*. and under 59*s*	0	14	0
59*s*. and under 60*s*.	0	13	0
60*s*. and under 61*s*.	0	12	0
61*s*. and under 62*s*.	0	11	0
62*s*. and under 63*s*.	0	10	0
63*s*. and under 64*s*.	0	9	0
64*s*. and under 65*s*.	0	8	0
65*s*. and under 66*s*.	0	7	0
66*s*. and under 69*s*.	0	6	0
69*s*. and under 70*s*.	0	5	0
70*s*. and under 71*s*.	0	4	0
71*s*. and under 72*s*.	0	3	0
72*s*. and under 73*s*.	0	2	0
73*s*. and upwards	0	1	0

BARLEY—

Whenever the average price of barley, made up and published in the manner required by law, shall be for every quarter under 26*s*., the duty shall be for every quarter	0	11	0
26*s*. and under 27*s*.	0	10	0
27*s*. and under 30*s*.	0	9	0
30*s*. and under 31*s*.	0	8	0
31*s*. and under 32*s*.	0	7	0
32*s*. and under 33*s*.	0	6	0
33*s*. and under 34*s*.	0	5	0
34*s*. and under 35*s*.	0	4	0
35*s*. and under 36*s*.	0	3	0
36*s*. and under 37*s*.	0	2	0
37*s*. and upwards	0	1	0

OATS—

Whenever the average price of oats, made up and published in the manner required by law, shall be for every quarter under 19*s*., the duty shall be for every quarter	0	8	0
19*s*. and under 20*s*.	0	7	0

Oats (*continued*)—	£	s.	d.
20*s*. and under 23*s*.	0	6	0
23*s*. and under 24*s*.	0	5	0
24*s*. and under 25*s*.	0	4	0
25*s*. and under 26*s*.	0	3	0
26*s*. and under 27*s*.	0	2	0
27*s*. and upwards	0	1	0

Rye, Pease, and Beans—

Whenever the average price of rye, or of pease, or of beans, made up and published in the manner required by law, shall be for every quarter

under 30*s*., the duty shall be for every quarter	0	11	6
30*s*. and under 33*s*.	0	10	6
33*s*. and under 34*s*.	0	9	6
34*s*. and under 35*s*.	0	8	6
35*s*. and under 36*s*.	0	7	6
36*s*. and under 37*s*.	0	6	6
37*s*. and under 38*s*.	0	5	6
38*s*. and under 39*s*.	0	4	6
39*s*. and under 40*s*.	0	3	6
40*s*. and under 41*s*.	0	2	6
41*s*. and under 42*s*.	0	1	6
42*s*. and upwards	0	1	0

Wheat Meal and Flour—

For every barrel, being one hundred and ninety-six pounds,

A duty equal in amount to the duty payable on thirty-eight and a half gallons of wheat.

Oatmeal—

For every quantity of one hundred and eighty-one pounds and a half,

A duty equal in amount to the duty payable on a quarter of oats.

Maize or Indian Corn, Buck Wheat, Bear or Bigg—

For every quarter,

A duty equal in amount to the duty payable on a quarter of barley.

If the produce of and imported from any British Possession in North America, or elsewhere out of Europe:

Wheat—

Whenever the average price of wheat, made up and published in the manner required by law, shall be

under 55*s*. for every quarter, the duty shall be for every quarter	0	5	0
55*s*. and under 56*s*.	0	4	0
56*s*. and under 57*s*.	0	3	0
57*s*. and under 58*s*.	0	2	0
58*s*. and upwards	0	1	0

Barley—

Whenever the average price of barley, made up and published in the manner required by law, shall be

under 28*s*. for every quarter, the duty shall be for every quarter	0	2	6
28*s*. and under 29*s*.	0	2	0
29*s*. and under 30*s*.	0	1	6
30*s*. and under 31*s*.	0	1	0
31*s*. and upwards	0	0	6

OATS—

Whenever the average price of oats, made up and published in the manner required by law, shall be

	£	s.	d.
under 22s. for every quarter, the duty shall be for every quarter	0	2	0
22s. and under 23s.	0	1	6
23s. and upwards	0	0	6

RYE, PEASE, AND BEANS—

Whenever the average price of rye, or of pease, or of beans, made up and published in the manner required by law, shall be

under 30s. for every quarter, the duty shall be for every quarter	0	3	0
30s. and under 31s.	0	2	6
31s. and under 32s.	0	2	0
32s. and under 33s.	0	1	6
33s. and under 34s.	0	1	0
34s. and upwards	0	0	6

WHEAT MEAL AND FLOUR—

For every barrel, being one hundred and ninety-six pounds,
A duty equal in amount to the duty payable on thirty-eight and a half gallons of wheat.

OATMEAL—

For every quantity of one hundred and eighty-one pounds and a half,
A duty equal in amount to the duty payable on a quarter of oats.

MAIZE OR INDIAN CORN, BUCK WHEAT, BEAR OR BIGG—

For every quarter,
A duty equal in amount to the duty payable on a quarter of barley.

SCHEDULE OF CITIES AND TOWNS TO WHICH THE 5 VICT. CAP. 14, REFERS.

The towns comprised in the schedule, which are marked with an asterisk (*), are those which were not appointed by the act 9 Geo. IV. cap. 60, as places from which returns were to be made.

Counties.	*Towns.*	*Counties.*	*Towns.*
CHESHIRE	Chester.	DERBY	Derby.
	Nantwich.		* Chesterfield.
	Middlewich.		
	Four Lane Ends.	NOTTINGHAM	Nottingham.
	* Congleton.		Newark.
	* Macclesfield.		* Mansfield.
	* Stockport.		* Retford.
LANCASTER	Liverpool.	LEICESTER	Leicester.
	Ulverston.		* Loughborough.
	Lancaster.		* Hinckley.
	Preston.		* Lutterworth.
	Wigan.		
	Warrington.	NORTHAMPTON	Northampton.
	Manchester.		* Peterborough.
	Bolton.		* Daventry.
	* Blackburn.		* Wellingborough.
	* Bury.		* Kettering.
	* Rochdale.		

Counties.	*Towns.*
WARWICKSHIRE .	Coventry.
	Birmingham.
	* Warwick.
	* Stratford-on-Avon.
WORCESTER . .	Worcester.
	* Bromsgrove.
	* Kidderminster.
	* Stourbridge.
	* Evesham.
GLOUCESTER . .	Gloucester.
	Cirencester.
	Tetbury.
	Stow-on-the-Wold.
	Tewkesbury.
	* Cheltenham.
	* Dursley.
	* North Leach.
	* Stroud.
SOMERSETSHIRE .	Bristol.
	Taunton.
	Wells.
	Bridgewater.
	Frome.
	Chard.
	* Somerton.
	* Shepton Mallet.
	* Wellington.
	* Wiveliscomb.
MONMOUTHSHIRE	Monmouth.
	Abergavenny.
	Chepstow.
	Pontypool.
	* Newport.
DEVONSHIRE . .	Exeter.
	Barnstaple.
	Plymouth.
	Totness.
	Tavistock.
	Kingsbridge.
	* Oakhampton.
	* Tiverton.
	* Honiton.
CORNWALL . . .	Truro.
	Bodmin.
	Launceston.
	Redruth.
	Helston.
	St. Austell.
	* Falmouth.
	* Callington.
	* Liskeard,
	* St. Columb.
DORSETSHIRE . .	Blandford.
	Bridport.
	Dorchester.
	Sherborne.
	Shaftesbury.
	Wareham.
	* Poole.
HAMPSHIRE . .	Winchester.
	Andover.
	Basingstoke.
	Fareham.
	Havant.
	Newport.
	Ringwood.
	Southampton.
	Portsmouth.
	* Christchurch.
RUTLAND . . .	* Okeham.
HEREFORD . . .	* Leominster.
	* Hereford.
	* Kington.
SHROPSHIRE . .	* Shrewsbury.
	* Ludlow.
	* Newport.
	* Oswestry.
	* Wellington.
	* Wenlock.
	* Whitchurch.
	* Market Drayton.
WILTSHIRE . .	* Swindon.
	* Devizes.
	* Salisbury.
	* Troubridge.
	Warminster.
	* Chippenham.
STAFFORDSHIRE .	* Stafford.
	* Burton-on-Trent.
	* Lichfield.
	* Newcastle-under-Lyme.
	* Stone.
	* Uttoxeter.
	* Walsall.
	* Wolverhampton.
MIDDLESEX . .	London.
	Uxbridge.
HERTFORDSHIRE .	Hertford.
	Royston.
	* Bishop Stortford.
	* St. Albans.
	* Hemel Hempstead.
	* Hitchin.

Counties.	*Towns.*
SURREY	Guildford.
	* Croydon.
	* Kingston.
	* Dorking.
ESSEX	Chelmsford.
	Colchester.
	Romford.
	* Chipping Ongar.
	* Saffron Walden.
	* Braintree.
KENT	Maidstone.
	Canterbury.
	Dartford.
	* Chatham and Rochester.
	* Dovor.
	* Gravesend.
	* Ashford.
SUSSEX	Chichester.
	Lewes.
	Rye.
	* Brighton.
	* East Grinstead.
	* Battle.
	* Arundel.
	* Hastings.
	* Midhurst.
	* Shoreham.
BEDFORD . . .	Bedford.
	* Leighton Buzzard.
	* Luton.
BERKSHIRE . .	Windsor.
	Reading.
	* Abingdon.
	* Maidenhead.
	* Newbury.
	* Wallingford.
BUCKS	Aylesbury,
	* Buckingham.
	* High Wycombe.
	Newport Paguel.
OXFORDSHIRE .	Oxford.
	* Banbury.
	* Henley.
	* Witney.
	* Chipping Norton.
HUNTINGDON . .	Huntingdon.
	St. Ives.
CAMBRIDGE . .	Cambridge.
	Ely.
	Wisbeach.
	* Newmarket.
SUFFOLK . . .	Ipswich.
	Woodbridge.
	Sudbury.
	Hadleigh.
	Stow Market.
	Beccles.
	Bungay.
	Lowestoft.
	Bury St. Edmunds.
NORFOLK . . .	Norwich.
	Yarmouth.
	Lynn.
	Thetford.
	Watton.
	Diss.
	East Dereham.
	Harleston.
	Holt.
	Aylsham.
	Fakenham.
	North Walsham.
	* Swaffham.
LINCOLN . . .	Lincoln.
	Gainsborough.
	Glanford Bridge.
	Louth.
	Boston.
	Sleaford.
	Stamford.
	Spalding.
	* Barton on Humber.
	* Bourne.
	* Grantham.
	* Grimsby.
	* Horncastle.
	* Market Raisin.
	* Caistor.
	* Alford.
	* Holbeach.
	* Long Sutton.
YORK	York.
	Leeds.
	Wakefield.
	Bridlington.
	Beverley.
	Hawden.
	Sheffield.
	Hull.
	Whitby.
	New Malton.
	* Barnsley.
	* Bedale.
	* Bradford.
	* Doncaster.
	* Knaresborough
	* Pickering.
	* Richmond.

Counties.	*Towns.*	*Counties.*	*Towns.*
YORK, (*continued*)	* Ripon.	CUMBERLAND, (*continued*)	Egremont.
	* Selby.		* Wigton.
	* Skipton.		* Maryport.
	* Thirsk.		* Workington.
	* Rotherham.		
	* Otley.	WESTMORELAND .	Appleby.
	* Thorne.		Kendal.
DURHAM . . .	Durham.	WALES	Carmarthen.
	Stockton.		Carnarvon.
	Darlington.		Haverfordwest.
	Sunderland.		Cardiff.
	Barnard Castle.		Denbigh.
			Wrexham.
NORTHUMBERLAND.	Walsingham.		* Brecon.
	Belford.		* Mold.
	Hexham.		* Bangor.
	Newcastle-upon-Tyne.		* Cowbridge.
	Morpeth.		* Newtown.
	Alnwick.		* Corwen.
	Berwick.		* Welshpool.
			* Llangefni.
CUMBERLAND . .	Carlisle.		* Llandillo.
	Whitehaven.		* Knighton.
	Cockermouth,		* Swansea.
	Penrith.		

IV. Obstructing the Free Passage of Grain.

Obstructing free passage of grain.

This offence is provided for by the 9 Geo. IV. c. 31, s. 26, and has been treated of, *Vol. I., tit. "Assault."*

As to the liability of the hundred in case of, *see "Hundred," Vol. III.*

V. Forms.

Conviction against a corn-dealer for not making the declaration required by 5 Vict. c. 14, s. 23, (*ante*, 9).

County [or *Borough*] *of* ———. { *BE it remembered, that on the day of A. D., &c.*, [as in the general form of conviction, *ante*, Vol. I., tit. "Conviction"] *and informed us that A. B. being a dealer in British corn* (*a*), *at* [or *within*] *the city* [or *town*] *of in the county of , being one of the cities* [or *towns*] *named in the schedule annexed to a certain act of Parliament made and passed in the fifth year of the reign of her Majesty Queen Victoria, intituled, "An Act to amend the Laws for the Importation of Corn," did on the day of , A. D. , and continually from thence for the space of calendar months, at aforesaid, deal in British corn, and that the said A. B. did not, before he so dealt in British corn as aforesaid, make or deliver at or within the said city* [or *town*] *of , to the mayor or chief magistrate of the said city* [or *town*], *or to any justice of the peace for the said city* [or *town*], *or for the said county of* [or *riding*, or *division*, as the case may be], *in which the said city* [or *town*] *is situate, the declaration in writing, subscribed with the hand of the said A. B., in the form and manner as by the said act of Parliament in that behalf required, contrary to the form of the statute in such case made and provided, whereupon the said A. B., after having been duly summoned, &c.* [proceed as in the general form of conviction, Vol. I., tit. "Conviction"].

(*a*) If not a *dealer* in corn, the conviction must be altered accordingly throughout.

County [or *Borough*] } *BE it remembered, that on the day of , A. D., of* ——. } *&c.*, [as in the general form of conviction, *ante*, Vol. I., tit. "Conviction,"] *and informed us that A. B., being a dealer in British corn* (*a*) *at and within the city* [or *town*] *of , in the county of , being one of the cities* [or *towns*] *named in the schedule annexed to a certain act of Parliament, made and passed in the fifth year of the reign of her Majesty Queen Victoria, intituled, "An Act to amend the Laws for the Importation of Corn," and having made the declaration in that behalf required by the said act of Parliament in such case made and provided, did, on divers days and times during the week ending on and including the day next preceding the first market day hereafter mentioned, to wit, on the day of , A. D. , and on divers days and times afterwards, at* [or *within*] *the said town* [or *city*], *deal in British corn, and did buy divers, to wit,* 1000 *parcels of divers, to wit,* 100 *sorts of British corn, at and for divers prices, from divers persons, by divers weights and measures, nevertheless the said A. B. did not on* (*Monday*) *the day of , A. D. , being the first market day of the week ending the day of , A. D. , holden within the said town* [or *city*] *return or cause to be returned to the officer of excise acting as inspector of corn returns for the said town* [or *city*] *of , at the place appointed for receiving such returns,* [or *to the continuing inspector of corn returns for the said town* [or *city*] *of* , or *to the inspector of corn returns for the said city of Oxford,* or *the town of Cambridge,* as the case may be,] *an account in writing, signed with the name of the said A. B., of the amount of each and every parcel of each respective sort of British corn by him bought during the week ending on and including the day next preceding such first market day as aforesaid, with the price thereof, and by what weight or measure the same was so bought by him, with the names of the sellers of each of the said parcels respectively, and with the names of the person or persons other than the said A. B., for or on account of whom the same was so bought and sold, in the form and manner as required by the said act of Parliament, contrary to the form of the statute in such case made and provided, whereupon the said A. B., after having been duly summoned, &c.* [Proceed as in the general form of conviction, *ante*, Vol. I., tit. "Conviction."]

5. Forms.

Conviction against a corn-dealer for not making the return directed by 5 Vict c. 14, s. 25, (*ante*, 10).

Coroner(*b*).

CORONERS are ancient officers by the common law, so called because they deal principally with the pleas of the Crown, and were of old time the principal conservators of the peace. (2 *Hawk.* c. 9, s. 1; see *Jervis's Cor.* 1, 2, 3).

Concerning whom will be shewn,

I. *The different Kinds of Coroners,* 24.

II. *Who may be a Coroner, and Number allowed,* 24.

[3 Edw. I. c. 10; 14 Edw. III. st. 1, c. 8.]

III. *Election of,* 24.

[28 Edw, III. c. 6; 58 Geo. III. c. 95.]

IV. *Duration of Office and Removal from,* 27.

V. *Places where Coroner has Jurisdiction,* 28.

(*a*) If not a *dealer* in corn, the conviction must be altered accordingly throughout.

(*b*) An act of Parliament is in contemplation to amend the laws respecting the duties of coroners, and to enable them to appoint deputies, and prevent injunctions being quashed for merely technical defects. Another act is also in contemplation for the holding inquests in places where the body is found, and to levy deodands on verdicts. Another act is also in contemplation to repeal the 58 Geo. III, c. 95, and amend the law respecting the office of county coroner. These acts, if passed, as probably they will be, will be found in the Addenda, tit. "*Coroner.*"

As to coroners for the county of Durham, see the 7 *Will.* IV. & 1 *Vict.* c. 61.

3. *Election of.*

VI. *Power to appoint a Deputy*, 28.

VII. *Power and Duty in taking Inquisitions of Deaths: and herein of the Forms of Inquisitions and other Matters relative thereto, and of Expenses of holding Inquests, and of Medical Witnesses*, 29.

[3 Edw. I. c. 10; 4 Edw. I. st. 2; 7 Geo. IV. c. 64; 6 & 7 Will. IV. c. 89; 7 Will. IV. & 1 Vict. c. 68.]

VIII. *Power and Duty in other Matters*, 44.

[4 Edw. I. st. 2.]

IX. *His Fees*, 44.

[3 Hen. VII. c. 1; 25 Geo. II. c. 29.]

X. *Other Privileges*, 45.

XI. *Punishment, &c. for not doing his Duty*, 46.

[3 Edw. I. c. 9; 3 Hen. VII. c. 1; 25 Geo. II. c. 29.]

XII. *Forms*, 47.

I. Different kinds of Coroners.

Different kinds of.

There are three kinds of coroners—*viz.*

1st, Those *virtute officii*, as the lord chief and puisne judges of the Court of Queen's Bench; (4 *Rep.* 57 *b*; 4 *Inst.* 73);—

2nd, Those *virtute cartæ sive commissionis*, as those within particular liberties and franchises, over which the lords or heads of corporations are empowered by charter to act themselves, or to create their own coroners; (*Mad. Exch.* 287; *Jerv.* 3; as to which see now the Municipal Corporation Act, *post*, tit. "*Corporations*"); or coroners of the verge of the Queen's court, or coroners of the Admiralty; (*Jerv.* 4, 5);—and

3rd, Those *virtute electionis*, which will be treated of under this title.

II. Who may be a Coroner. Number allowed.

Dignity.

Of ancient time this office was of great estimation, for none could have it under the degree of a knight. (3 *Edw. I. c.* 10; 4 *Inst.* 271; *Jerv. Cor.* 2, n. *a*).

Estate.

And by stat. 14 Edw. III. st. 1, c. 8, no coroner shall be chosen unless he have land in fee sufficient in the same county whereof he may answer to all manner of people.

It is observable that no precise amount of estate is expressly required by this statute; but the coroner ought to have sufficient property to maintain the dignity of his office, and to answer any fine that may be set upon him for his misbehaviour. But if, having an estate in fee within the county, it be insufficient to answer his fines, that will not operate as a disqualification, or be a ground for his removal, if he be of sufficient estate to execute his office, for the county upon his default will be liable to the fine, as a punishment for having elected an insufficient officer. (2 *H. P. C.* 50; 2 *Inst.* 175; *Jerv.* 9).

Number of.

There is no law limiting the number of coroners; and it seems that, if the justices at sessions sanction the application for the appointment of an additional coroner, the Lord Chancellor would order a writ to be issued for his election. (*Re Coroner of Salop*, 3 *Swanst.* 181, 183).

III. Election of.

To be chosen in the county court.

The coroner (as of ancient time the sheriffs and conservators of the peace) shall be chosen in full county, that is, in the county court, by the commons of the same county. (28 *Edw. III.* c. 6).

And this must be in pursuance of the Queen's writ for that purpose.

issuing out of and returnable into the Chancery: and none but freeholders have a voice at such election, for they only are suitors to the county court. (2 *Hawk.* c. 9, ss. 5, 10. The *value* of the freehold is not material).

3. *Election of.*

The stat. 58 Geo. III. c. 95, after reciting, that "Whereas there are no sufficient regulations for the election of coroners for counties," enacts, "That from and after the passing of this act, upon every election to be made of any coroner or coroners of any county in England and Wales, the sheriff of the county where such election shall be made shall hold his county court for the same election at the most usual place or places of election of coroners within the said county, and where the same have most usually been held for forty years last past, and shall there proceed to election at the next county court, unless the same fall out to be held within six days after the receipt of the writ *de coronatore eligendo*, or upon the same day; and then shall adjourn the same court to some convenient day, not exceeding fourteen days, giving ten days' notice of the time and place of election; and in case the said election be not determined upon the view, with the consent of the freeholders there present, but that a poll shall be demanded for determination thereof, then the said sheriff, or in his absence his under sheriff, with such others as shall be deputed by him, shall forthwith there proceed to take the said poll in some public place, by the same sheriff, or his under-sheriff as aforesaid in his absence, or others appointed for the taking thereof as aforesaid; and every such poll shall commence on the day upon which the same shall be demanded, and be duly and regularly proceeded in from day to day (Sunday excepted) until the same be finished; but so as that no poll for such election shall continue more than ten days at most (Sunday excepted), and the said poll shall be kept open seven hours at the least each day, between the hours of nine in the morning and five at night: and for the more due and orderly proceeding in the said poll, the said sheriff, or in his absence his under-sheriff, or such as he shall depute, shall appoint such number of clerks as to him shall seem meet or convenient for the taking thereof; which clerks shall all take the said poll in the presence of the said sheriff, or his under-sheriff, or such as he shall depute; and before they begin to take the said poll every clerk so appointed shall by the said sheriff, or his under-sheriff, or such as he shall depute as aforesaid, be sworn truly and indifferently to take the same poll, and to set down the names of each freeholder, and the place of his abode and freehold, and the name of the occupier thereof, and for whom he shall poll, and to poll no freeholder who is not sworn, if required to be sworn by the candidates or either of them, and which oaths of the said clerks, the said sheriff, or his under-sheriff, or such as he shall depute, are hereby empowered to administer; and the sheriff, or in his absence his under-sheriff as aforesaid, shall appoint for each candidate such one person as shall be nominated to him by each candidate, to be inspector of every clerk who shall be appointed for taking the poll; and every freeholder, before he is admitted to poll at the same election, shall, if required by the candidates, or any of them, first take the oath hereinafter mentioned, which oath the said sheriff by himself, or his under-sheriff, or such sworn clerk by him appointed for taking the said poll as aforesaid, is hereby authorized to administer; *videlicet*,

58 Geo. 3, c. 95.

Mode of proceeding.

Sheriff to hold his county court for election of coroner at usual place of election,

and if election not determined on view, then to proceed to take a poll.

Commencement and duration of poll.

Poll clerks to be appointed and sworn.

Inspector of poll clerk to be appointed.

Freeholder, if required, to be sworn before he polls.

"*YOU swear* [or being one of the people called Quakers, *you solemnly affirm*] *that you are a freeholder of the county of* , *and have a freehold estate, consisting of* , *lying at* , *within the said county; and that such freehold estate has not been granted to you fraudulently, on purpose to qualify you to give your vote at this election; and that the place of your abode is at* , [and if it be a place consisting of more streets or places than one, specifying what street or place,] *that you are twenty-one years of age, as you believe, and that you have not been before polled at this election*"

The oath of qualification.

3. *Election of.*

58 Geo 3, c. 95.

Punishment for perjury, or subornation of perjury

"And in case any freeholder or other person taking the said oath or affirmation hereby appointed to be taken by him as aforesaid shall thereby commit wilful and corrupt perjury, and be thereof convicted, and if any person shall unlawfully or corruptly procure or suborn any freeholder or other person to take the said oath or affirmation in order to be polled, whereby he shall commit such wilful and corrupt perjury, and shall be thereof convicted, he and they for every such offence shall incur such pains and penalties as are declared in and by two acts of Parliament, the one made in the fifth year of the late Queen Elizabeth, intituled, 'An Act for Punishment of such as shall procure or commit any wilful Perjury;' and the other made in the second year of his late Majesty King George the Second, intituled 'An Act for the more effectual preventing and further Punishment of Forgery, Perjury, and Subornation of Perjury, and to make it Felony to steal Bonds, Notes, or other Securities for Payment of Money;' and by any other law or statute now in force for the punishment of perjury or subornation of perjury."

5 Eliz. c. 9.

2 Geo. 2, c. 25

Mortgagor and cestui que trust to vote.

Sect. 2. "That no person or persons shall be allowed to have any vote at such elections for coroner or coroners of any county in England and Wales as aforesaid, for or by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of such estate; but that the mortgagor or cestui que trust in possession shall and may vote for the same estate, notwithstanding such mortgage or trust; and that all conveyances of any messuages, lands, tenements, and hereditaments, in order to multiply voices, or to split or divide the interest in any houses or lands among several persons, to enable them to vote at elections for a coroner of any county as aforesaid, are hereby declared to be void and of none effect."

Expense and poll clerks to be paid by the candidates.

Sect. 3. "That all the reasonable costs, charges, and expenses, the said sheriff, or his under-sheriff, or other deputy, shall expend or be liable to, in, and about the providing of poll books, booths, and clerks, (such clerks to be paid not exceeding 1*l.* 1*s.* each per diem), for the purpose of taking the poll at any such election, shall be borne, sustained, and paid by the several candidates at such election, in equal proportions."

Provisions of 58 Geo 3, to be closely pursued.

Mr. *Jervis*, in page 12 of his work, observes, "that the sole and principal object of this act is to regulate the time and mode of electing coroners, and its provisions must be followed strictly." In the case of the *Coroner of Stafford*, in *Ch. M. T.* 1826, MS. there cited, (2 *Russ. Chan. Rep.* 475, *S. C.*), the writ *de coronatore eligendo* was received by the under-sheriff on the 1st of April, 1826. On the 5th of the same month the under-sheriff informed the candidates for the office that the sheriff had appointed the 27th of April then instant for the election; the next county court after the receipt of the writ being holden on the 13th of April, the sheriff did not proceed to the election, but gave notice that he would proceed to the election on the 27th. On that day the election was commenced, and proceeded in from day to day until it terminated. This was holden to be irregular by the lord chancellor, and the chief justices of the King's Bench and Common Pleas, the sheriff being bound by the statute to proceed to the election at the next county court after the receipt of the writ, unless it happened to be holden within six days, or upon the day of the receipt of the writ. When the writ is received within six days of the next county court, or upon the same day, the notice of adjournment is proclaimed at the rising of the court, and is usually affixed on the church doors.

Electors, who may be.

We have already seen (*ante*, 24) that the electors must be freeholders; but as to the amount of their estate it seems, however small its value may be, it will suffice to confer the right of voting, provided it be not obtained fraudulently and colourably for the purpose of qualifying the elector. To confer a right to vote, the elector must have a freehold interest in lands within the county. Thus, tenants in fee-imple, in fee-tail, or for life, may vote at the election of coroners; but

any thing short of a freehold interest, as a lease for years, will not confer that privilege. (*Jervis*, 15. *See further sect.* 2 *of* 58 *Geo. III.* c. 95, *ante*, 26). 4. *Duration of Office, &c.*

Corporators sole have a freehold in lands which they enjoy in that character, but members of corporations aggregate are not entitled to vote in respect of lands belonging to the corporation. Purchasers of redeemed land tax, (after August, 1802), after registry of the contract and certificate, are to be taken to be in the actual seisin and possession of a yearly rent or sum as a fee-farm rent, equal in amount to the land tax purchased, free from all charges and deductions, to be issuing and payable out of the manors, messuages, lands, tenements, or hereditaments, whereon the land tax so purchased was charged, on the same days as such land tax was payable at the time of the purchase thereof. (42 Geo. III. c. 116, s. 154).

All natural persons born within the dominions of the crown of England are capable of holding freehold estates, unless they be under some civil disability, and therefore incapable of possessing any real property.

Aliens are incapable of holding freehold estates for their own benefit; but if they be naturalized by act of parliament, or made denizens by the King's letters-patent, they may.

Women, infants, lunatics, and idiots, cannot vote at the election of coroners. (*Jervis*, 16, 17).

Swearing in.

After the election the sheriff should in open court administer to the coroner elected the oaths of allegiance, supremacy, and abjuration, and also the oath of office. (*See* "*Oaths*," *Vol. V.*). This being done, the coroner is in full possession of his office, and the business of the election is terminated. (*Jervis* 19; 2 *Hale*, 55). The coroner should also within six months after his election make and subscribe the declaration required by statute 9 Geo. IV. c. 17, ss. 2, 5., which may be done either in the Courts of Chancery or King's Bench, or at the quarter sessions of the county. (9 Geo. IV. c. 17, s. 6. *Jervis*, 19).

Return of sheriff.

The sheriff must make his return into Chancery into the Petty Bag Office, of the election; if he refuses so to do, an action on the case lies against him. (*See Turner* v. *Stirling*, 2 Vent. 27).

County to answer for him.

Being elected by the county, if he be insufficient, and not able to answer such fines and other duties in respect of his office, as he ought, the county, as his superior, shall answer for him. (2 *Inst.* 175, *ante*, 24).

In boroughs

As to the election, &c., of coroners in boroughs, *see post*, "*Corporations*."

IV. Duration of Office, and Removal from.

Duration of office.

Being chosen by the county, his office continues, notwithstanding the demise of the King. (4 *Inst.* 271).

Removal, causes for, and how effected.

The coroner is chosen for life, but he may be removed either by being made sheriff or chosen verderer, which are offices incompatible with the other, or by the King's writ *de coronatore exonerando*, for a cause to be therein asigned: as that he is engaged in other business, is incapacitated by years or sickness, hath not a sufficient estate in the county, or lives in an inconvenient part of it. (*Fitz. N. B.* 163, 164; 1 Bla. Com. 348).

By 25 Geo. II. c. 22, extortion, neglect, or misbehaviour, are good causes for his removal, *post*, 46.

And independently of this statute, the great seal has power to remove coroners from their office for neglect of duty. (*Exp. Parnell*, 1 *J & W.* 451).

A coroner was removed where he used corrupt influence over the jury. (*R.* v. *Coates*, cited *Dick*, *J.*, 515).

Lying in prison for twelve months has been adjudged a good ground for removing a coroner, even though the duties of his office were during that time discharged by another coroner of the county. (*Exp. Parnell*, 1 *J. & W.* 451).

6. *Power to appoint a deputy.*

A common merchant who had been elected a coroner was removed upon the ground that he was *communis mercator*. (2 *Inst.* 32).

The practice is where a coroner is and ought to be removed, to issue both the writ *de coronatore exonerando* and that *de coronatore eligendo* at the same time, though the former must be first executed, and no notice of the issuing need be given to the party accused. (*Exp. Parnell*, 1 *J. & W.* 454).

The party removed may have a commission to inquire whether the cause assigned for removal be true, but he cannot traverse it. (*Id.*).

V. Places where Coroner has Jurisdiction over.

Places wherein coroner has jurisdiction.

The jurisdiction of coroners is limited to the county, liberty, or precinct, to and for which they are elected or appointed, and cannot be enlarged by any private act or delegation from the crown. (*Finch*, 388). For this reason no coroner, even though he had a special commission from the King for that purpose, could take confession of high or petit treason, with respect to which he had originally no jurisdiction. (2 *Inst.* 629; *Jervis*, 42).

In many cases, as with the coroner of the admiralty, or verge of the King's palace, a coroner has concurrent jurisdiction.

Where stroke and death in different counties.

The doubt which formerly existed as to whether an offender could be proceeded against in either county, when the stroke and death were in different counties, was removed by the statute 2 & 3 Edw. VI. c. 24, s. 2; and now,

7 Geo. 4, c. 64, s 12.

By 7 Geo. IV. c. 64, (which repeals that act), sect. 12, "where any felony or misdemeanor shall be committed on the boundary or boundaries of two or more counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one county and completed in another, every such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in any of the said counties in the same manner as if it had been actually and wholly committed therein."

But where it appeared on the face of an inquisition that the stroke occurred in the county of B., and the death within the limits of the borough of R., which had a separate coroner under the Corporation Act, it seems to have been decided that the borough coroner and a jury of the borough had no jurisdiction to hold an inquest on the body. (*Reg.* v. *Great Western Railway Company*, *Q. B. T. T.* 1842).

If a party has been killed in one county, the coroner, *super visum corporis*, may now, by virtue of the 7 Geo. IV. c. 64, s. 9, inquire, as he formerly might at common law, of all accessaries and procurers before the fact, though the procurements were in another county. (See *Jervis*, 52; 1 *Hale*, *P. C.* 427). The 7 Geo IV. c. 64, repeals the 2 & 3 Edw. VI. c. 24. (*See the 9th section, ante, Vol. I., tit. "Accessary"*).

VI. Power to appoint a Deputy.

Power to appoint a deputy.

The *judicial* duties of the coroner, as holding inquests or the like, must be discharged by the coroner himself, and cannot be deputed. (*Cromp. Just.* f. 227 a; 2 *H. P. C.* 58; 1 *E. P. C.* 383; *R.* v. *Farrant*, 3 *B. & Ald.* 260; 1 *Chit. Rep.* 746, *S. C.*; *Jervis*, 54, 55). So, where an inquest was held on a person deceased, in the coroner's absence, by C. A., his clerk, who signed the inquisition, "C. A.," coroner, and other irregularities took place in the proceedings, but did not appear on the face of the inquisition: on application by the father of the deceased, eight months after the inquest, to have the inquisition brought up by certiorari to be quashed, that a new inquest might be held, on affidavit of the above facts, and on a suggestion that the cause of death had not been properly investigated:—The court refused to quash such

an inquisition, considering it a nullity. (*In re Dawes*, 8 *Ad. & E.* 936; 1 *Per. & D.* 146, *S. C.*)

7. *Power and Duty on an Inquest.*

It has been contended that coroners of particular liberties and franchises may by prescription appoint a deputy. But it would seem that the general principles applicable to coroners by election would equally apply to coroners by appointment, and render such a custom bad. (*Jervis*, 56). In *R.* v. *Coroner, &c. of London*, (*Jervis, Adda.* 408; *Re Carruthers*, 2 *M. & M.* 397, *S. C.*), this point was raised, but not settled.

The coroner of the Admiralty, by virtue of his patent, may appoint a deputy.

VII. Power and Duty in taking an Inquisition of Death.

Duty in taking inquisition of death.

In general it is the most important duty of a coroner to take inquests of unnatural or sudden deaths, and this whether they arise by accident, *felo de se*, or in prison.

Notice.

When it happens that any person comes to an unnatural death, the township shall give notice thereof to the coroner. Otherwise, if the body be interred before he come, the township shall be amerced. (4 *MS. Sum.* 33).

Burying without notice.

And by *Holt*, C. J., it is a matter indictable to bury a man that dies a violent death, before the coroner's inquest has sat upon him. (4 *MS. Sum.* 33; 2 *Hawk.* c. 9, s. 23).

Lying unburied

If the township shall suffer the body to lie till putrefaction, without sending for him, they shall be amerced. (*Id.*)

Precept to summon a jury.

The Jury.]—Power of summoning jury is given to the coroner; he is to issue a precept to the constable of the four, five, or six next townships to return a competent number of good and lawful men of their townships, to appear before him in such a place to make an inquisition touching that matter. (4 Edw. I. st. 2; 2 *Hale*, 59). Or he may send his precept to the constable of the hundred. (*Wood's Inst.* b. 4, c. 1).

It seems sufficient, and it is the practice, to summon the jury only from the neighbourhood. (*R.* v. *Crosse*, 1 *Sid.* 204; 1 *Keb.* 723, *S. C.*; 2 *Hawk.* c. 9. s. 22).

The jury.

The 8 Hen. VI. c. 19, enacts, that the inquiry shall be made by persons having lands of the yearly value of 40*s.*, but it is not usual to return a jury having such qualifications.

Inquests held by the coroner in virtue of his office without writ, are expressly excepted from the operation of the late jury act, 6 Geo. IV. c. 50, s. 32.

The jury must consist of twelve at the least, and twelve must agree in the verdict. (See *Cobat's case*, 1 *H. P. C.* 161, n.; *Lambert* v. *Taylor*, 6 *D. & R.* 196; 4 *B. & Cres.* 138, *S. C.*)

A coroner's inquisition ought to show upon the face of it of what place the party who took it was coroner; and that it was taken by the oath of "honest and lawful men." (*Anon.*, 2 *Ld. Raym.* 1305). As to who are such men, *see* "*Jurors*," *Vol. III.*

If the constables make not a return, or the jurors returned appear not, their defaults are to be returned to the coroner; and the constables or jurors in default shall be amerced before the judge of assize. (2 *Hale*, 59.)

Coroners have no power to impose any fine or amercement. (2 *Inst.* 136; 2 *H. P. C.* 62; *Jervis*, 225).

If the coroner, after notice, be remiss in summoning the jury, or otherwise, he may be amerced by virtue of the statute *de officio coronatoris*; (1 *Hale, P. C.* 424, 2nd ed. 58); and by the provisions of the 3 Hen. VII. c. 1, he may be fined 100*s.* for each default.

By whom taken, where several coroners.

By whom Inquest taken.]—An inquisition *super visum corporis* may be taken by one, although there be several coroners in the county; (2 *H. P. C.* 56); for wherever coroners are authorized to act as judges,

7. *Power and Duty on an Inquest.*

the act of one who first proceeds in the inquiry, and perfects it, is of equal authority as if all had joined, but after the proceeding has been instituted, and concluded by one, the act of any other will be void. (2 *H. P. C.* 59; *Standf. P. C.* 53). The coroner, we have seen, cannot act by deputy, (*ante*, 28).

As to the places wherein he has jurisdiction, (*ante*, 28).

When to be taken.

When to be taken.]—The inquest must be taken within a reasonable time after the death of the party; hence seven months has been held too late. (*Rex* v. *Bond*, 1 *Stra.* 22; *Rex* v. *Clerk*, *Salk.* 377; *Holt*, 167, *S. C.*)

The proceeding by inquisition being judicial, must not be conducted on a Sunday. (See 9 *Co.* 666).

Place of holding.

Place of holding.]—It is not absolutely requisite that the inquest should be held at the same place where the body is viewed. (2 *Hawk.* c. 9, s. 25).

Swearing and charge

Swearing of Jury and viewing Body.]—The jury appearing is to be sworn and charged by the coroner to inquire, upon the view of the body, how the party came by his death. (2 *Hale*, 60).

View of the body.

For he can take inquisition of death only upon view of the body, and not otherwise; therefore if the body be interred before he come, he must dig it up. And this he may do lawfully within any convenient time, as in fourteen days. (4 *MS. Sum.* 33; 2 *Hawk.* c. 9, s. 23).

And it has been lately held, that a coroner's duty is judicial, and that he can only take an inquest *super visum corporis;* and that an inquest in which the jury were not sworn by the coroner himself, and *super visum corporis*, is absolutely void. The court, therefore, will not, after an adjournment by the coroner of such an inquest, grant any *mandamus* to compel him to proceed in it. (*Rex* v. *Farrant*, 3 *B. & Ald.* 260; 1 *Chit. Rep.* 745, *S. C.*)

If the body cannot be viewed, the coroner can do nothing; but the justices of the peace shall inquire thereof. (*Id.* 4 *MS. Sum.* 334).

It seems the whole of the body should be inspected. (*Rex* v. *Bond*, 1 *Stra.* 22).

So essential is the view to the validity of the inquisition, that if the body be not found, or have lain so long before the view that no information can be obtained from the inspection of it, or if there be danger of infection by digging it up, the inquest ought not to be taken by the coroner, unless he have a special commission for that purpose; but as the proceeding before the coroner is one only of several, application should be made in such cases to the magistrates or justices authorized to inquire of felonies, &c., who without viewing the body shall take the inquest by the testimony of witnesses. (5 *Rep.* 110; 2 *R. Abr.* 96; 2 *Hawk. P. C.* c. 9, s. 23). Indeed it would seem that coroners may be amerced for taking up a body that has been buried so long, that, from its state of decomposition, no information can result from the view. (*Rex* v. *Parker*, 2 *Lev.* 140); and that in such a case the court into which the inquisition is returned may, upon affidavit of the circumstances, refuse to receive and file it. (*Rex* v. *Bond*, 1 *Stra.* 22; 2 *Hawk.* c. 9, s. 24; *Jervis*, 29).

Of what inquest shall be where a person is slain.

Of what the Inquest shall be.]—The jury being sworn, and the body upon view, he shall inquire upon the oaths of them, in this manner, by the statute of 4 Edw. I. stat. 2, called the statute *de officio coronatoris*, *viz.* :—

If they knew where the person was slain; whether it were in any house, field, bed, tavern, or company;

Who are culpable, either of the act, or of the force; and who were present, either men or women, and of what age soever they be, if they can speak, or have any discretion;

And how many soever be found culpable, they shall be taken and delivered to the sheriff, and shall be committed to the gaol;

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And such as be found, and be not culpable, shall be attached until the coming of the judges of assizes.

And by the same statute, if it fortune any such man be slain, which is found in the fields, or in the woods, first it is to be inquired whether he were slain in the same place or not;

And if he were brought and laid there, they should do so much as they can to follow their steps that brought the body thither, whether he were brought upon a horse or in a cart.

It shall also be inquired if the dead person were known, or else a stranger, and where he lay the night before.

Wounds.

Also by the same statute, all wounds ought to be viewed the length, breadth, and deepness; and with what weapons; and in what part of the body the wound or hurt is; and how many be culpable; and how many wounds there be; and who gave the wound.

Defendant's evidence.

And they must hear evidence on all hands, if it be offered to them, and that upon oath, because it is not so much an accusation or an indictment as an inquisition or inquest of office. (2 *Hale*, 157; *post*, 32, 33).

To inquire of the murderer's lands and goods.

And by the aforesaid statute if any be found culpable of the murder, the coroner shall immediately go to his house and shall inquire what goods he hath, and what corn he hath in his grange; and if he be a freeman, they shall inquire how much land he hath, and what it is worth yearly over and above the service due to the lord of the fee; and the land shall remain in the king's hands until the lords of the fee have made fine for it.

And when they have thus inquired upon every thing, they shall cause all the land, corn, and goods to be valued in like manner as if they should be sold immediately; and thereupon they shall be delivered to the whole township, which shall be answerable before the judges for all.

Persons drowned, or suddenly dead.

In like manner, by the said statute, it is to be inquired of them that be drowned or suddenly dead, whether they were so drowned or slain, or strangled by the sign of a cord tied straight about their necks, or about any of their members, or upon any other hurt found upon their bodies. And if they were not slain, then ought the coroner to attach the finders and all other in the company.

Flight.

He shall also inquire whether the persons found guilty fled; for which flight they forfeit goods and chattels. (2 *Hawk.* c. 9, s. 27, 51).

Township amerced for an escape.

And if any person be slain or murdered in the daytime, and the murderer escape untaken, the township shall be amerced. (3 Hen. VII. c. 1).

Deodands.

Concerning horses, boats, carts, and the like, whereby any are slain, which properly are called deodands, they also shall be valued and delivered unto the towns as before. (4 Edw. I. st. 2; *see post*, "*Deodands*").

By the express words of the 1 & 2 P. & M. c. 13, s. 5, he may inquire of *accessaries before the fact;* but he cannot inquire of accessaries *after* the fact. (2 *Hawk.* c. 9, s. 26, 27).

Persons dying in prison.

He ought also to inquire of the death of all persons who die in prison that it may be known whether they died by violence, or any other unreasonable hardships; for if a prisoner, by the duress of the gaoler, come to an untimely death, it is murder in the gaoler, and the law implies malice in respect of the cruelty. (3 *Inst.* 52, 91).

And this inquest upon prisoners ought to consist of a party jury, that is, six of the prisoners (if so many there be), and six of the next vill or parish, not prisoners. (*Umfreville's Coron.* 212).

Statute of Edw. I. merely directory.

The above statute of 4 Edw. I. st. 2, is merely directory, and in affirmance of the common law; and does not restrain the coroner from any branch of his power, nor excuse him from the execution of any part of his duty not mentioned in the statute, and which was incident to his office at common law. (2 *Hawk.* c. 9, s. 21; 3 *Inst.* 52).

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Coroners not to intrude into families or hold unnecessary inquests.

Coroners ought not, in general, where a party dies by the visitation of God, as from apoplexy or the like, nor in any case, unless a very doubtful one, unnecessarily to obtrude themselves into private families for the purpose of instituting inquiry. (*Rex* v. *Justices of Kent*, 11 *East*, 229). They should in general wait until they are sent for by the peace officers of the place where the violent or unnatural death occurred before holding an inquest.

Evidence and witnesses.

Evidence and Witnesses.]—The coroner must hear evidence on all hands, if it be offered to him, and that upon oath, because it is not so much an accusation or an indictment, as an inquisition or inquest of office. (2 *Hale*, 157, *supra*).

In *R.* v. *Scory*, (1 *Leach*, 43), the Court of King's Bench granted a rule against the coroner, to shew cause why a criminal information should not be filed against him for refusing, on taking an inquisition *super visum corporis*, to receive evidence on the part of the person accused.

The coroner, as an incident to his office, has authority, and it is his duty, to issue a summons to compel the appearance of witnesses, and to commit them for their contempt should they refuse to appear, or having appeared, to give evidence upon the subject of the inquiry. (1 *Chit. C. L.* 164).

On the appearance of each witness the coroner should take down his name, abode, and occupation, and then administer the oath that he shall speak the truth, &c. (*Umf. Cor.* 177). In case an interpreter is necessary, the oath must be administered to him. (*Id.* 182). (As to witnesses in general, *see post*, "*Evidence;*" *and see further*, *post*, "*Examination*").

The jurors at any time during the investigation may call back before them any witness who has been examined, and ask any question that may suggest itself to their minds as elucidatory of their inquiry.

Taking down examinations in writing.

7 Geo. 4, c. 64.

Binding witnesses to appear, &c.

The 7 Geo. IV. c. 64, s. 4, which repeals the 1 & 2 P. & M. c. 13, s. 5, enacts, "that every coroner, upon any inquisition before him taken, whereby any person shall be indicted for manslaughter or murder, or as an accessary to murder before the fact, shall put in writing the evidence given to the jury before him, or as much thereof as shall be material; and shall have authority to bind by recognisance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next court of oyer and terminer, or gaol delivery, or superior criminal court of a county palatine, or great sessions, at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognisances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before or at the opening of the court."

Penalty for his neglect.

By sect. 5 he may be fined for non-compliance with this enactment, (*see post*, 41).

This enactment applies to coroners of all jurisdictions, as well of the county as of exempt franchises and liberties. (Sect. 6, *post*, 41).

The examination should be taken down as near as possible in the very words of the party examined, and not according to the effect of his examination. (*See tit.* "*Evidence*," *post*).

What witnesses should be bound to appear.

In a case of manslaughter, it is the duty of the coroner to bind over all those witnesses who prove any material fact against the party accused, and not those who are called for the purpose of exculpating him. But if the coroner bind over all the witnesses on both sides, no blame is imputable to the clerk of indictments, if he require them all to be put on the back of the bill, and examined before the grand jury. (*Reg.* v. *Taylor*, 9 *C. & P.* 672).

Certifying examination.

The depositions ought regularly to be returned to the clerk of assizes at the opening of the commission, or if possible before, so as to enable

the judge who presides to examine the facts of each case, that he may explain to the grand jury in his charge any difficulty that may exist, and state to them the law as applicable to the facts. Coroners have frequently been censured for remissness in this respect. But they are not bound to return the depositions, unless there be something depending before the court to make it necessary. (*Coroner of Westminster's case*, 2 *Stra.* 1073). Still, in a case where a coroner's jury, on the investigation of a case of homicide, returned a verdict "of wilful murder against some person or persons unknown," and the coroner returned the depositions he had taken to the Central Criminal Court:—it was held, on application by the counsel for a prisoner indicted for the murder of the same person, for a copy of such depositions, that, although the coroner could not in such a case have been compelled to return them, under statut· 7 Geo. 4, c. 64, s. 4, yet that having done so, the judges had power, by their general authority as a Court of justice, to order a copy to be given if they thought it material to the interests of justice. (*Rex* v. *Greenacre*, 8 *Car. & P.* 32).

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The court will not grant a rule nisi to remove the depositions taken before a coroner, and to bail a party charged upon the coroner's inquest with manslaughter, without an affidavit of what took place before the Coroner. (*Rex* v. *Mills*, 4 *Nev. & M.* 6).

See further as to depositions being evidence on other trials, *tit.* "*Evidence*," *post.*

Expenses of holding Inquests.]—By the 7 Will. IV. & 1 Vict. c. 68, intituled "An Act to provide for Payment of the Expenses of holding Coroners' Inquests," reciting that "the holding of coroners' inquests on dead bodies is attended with divers necessary expenses, for the payment whereof no certain provision is made by law, and such expenses have usually been discharged without any lawful authority for that purpose out of the monies levied for the relief of the poor; and it is expedient to make adequate legal provision for the payment of such expenses;" it is enacted, "that the justices of the peace for every county, riding, division, or district in England and Wales, in general or quarter sessions assembled, shall, at the general or quarter sessions of the peace to be holden next after the passing of this act, or at some subsequent general or quarter sessions, and the town council of every borough having a coroner shall at the quarterly meeting of such council which shall be holden next after the passing of this act, or at some subsequent quarterly meeting thereof, make or cause to be made a schedule of the several fees, allowances, and disbursements which, on the holding of any inquest on any dead body within such county, riding, division, district, or borough, may be lawfully paid and made by the coroner holding such inquest (other than the fees payable to medical witnesses under and by virtue of an act passed in the last session of parliament, intituled 'An Act to provide for the Attendance and Remuneration of Medical Witnesses at Coroners' Inquests'); and it shall be lawful for such justices in general or quarter sessions assembled, and for such town council at any such quarterly meeting as aforesaid, from time to time to alter and vary such schedule as to such justices and town council respectively may seem fit; and the said justices and town council respectively shall cause a copy of every such schedule to be deposited with the clerk of the peace of such county, riding, division, district, or borough, and one other copy thereof to be delivered to every coroner acting in and for such county, riding, division, district, or borough as aforesaid; and whenever any inquest shall be holden on any dead body the coroner holding the same shall immediately after the termination of the proceedings advance and pay all expenses reasonably incurred in and about the holding thereof, not exceeding the sums set forth in the said schedule, and which sums so advanced and paid shall be repaid to the said coroner in manner hereinafter mentioned: provided always, that until such

Expenses of inquests

7 Will. 4 & 1 Vict. c. 68.

Schedule to be made of fees payable on holding inquests.

6 & 7 Will. 4, c. 89.

7 Will. 4, & 1 Vict. c. 68.

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schedule as aforesaid shall have been made the coroner shall advance and pay, at his discretion, all reasonable expenses of holding every inquest within the limits of his jurisdiction, and shall be repaid the amount thereof, in the same manner as if the sums so paid had been included in a schedule duly made according to the provisions of this act."

7 Will. 4, & 1 Vict. c. 68

Coroners to pay medical witnesses.

2. "That so much of the said act passed in the last session of parliament as directs the coroner to make out an order on the churchwardens and overseers of the parish in which any death shall have happened for payment of the remuneration or fee payable under the provisions of that act to any medical practitioner, and as directs such churchwardens and overseers to pay the same out of the funds collected for the relief of the poor of such parish, shall be and the same is hereby repealed, and in lieu thereof the coroner shall, immediately after the termination of the proceedings at any inquest, advance and pay such remuneration or fee to every medical witness summoned under the provisions of the said act, and the amount thereof shall be repaid to the said coroner in manner hereinafter mentioned."

Coroners of counties to lay their accounts before the sessions, and coroners of boroughs to lay them before the town council.

3. "That every coroner acting in and for any county, riding, division, or district shall, within four months after holding any inquest, cause a full and true account of all sums paid by him under the provisions of this act, including all sums paid to any medical witness as aforesaid, to be laid before the justices of the peace of such county, riding, division, or district in general or quarter sessions assembled, or at any adjournment thereof; and every coroner of any borough shall, within four months after holding any inquest, cause a full and true account of all sums paid by him under the provisions of this act, including as aforesaid, to be laid before the town council of such borough; and all such accounts shall be accompanied by such vouchers as under the circumstances may to such justices or council respectively seem reasonable; and such justices or council respectively may, if they shall think fit, examine the said coroner on oath as to such account, and on being satisfied of the correctness thereof such justices or council respectively shall make an order on the treasurer of the said county, riding, division, or district, or of the said borough (as the case may be), for payment to the said coroner not only of the sum due to him on such account, but also of a sum of six shillings and eight pence for every inquest holden by him as aforesaid, over and above all other fees and allowances to which he is now by law entitled; and the treasurer of any county, riding, division, or district on whom any such order shall be made shall, out of the monies in his hands arising from the county rates, and the treasurer of any borough on whom any such order shall be made shall, out of the monies in his hands on account of the borough fund, pay to the said coroner the sum mentioned in such order, without any abatement or deduction whatever; and every such treasurer shall, on passing his accounts, be allowed all sums which he shall pay in pursuance of any such order as aforesaid."

The coroner to be repaid out of the county rates or the borough fund.

Act applicable to London and Southwark.

4. "That this act and the several provisions herein contained shall extend and be applicable to the city of London and the town and borough of Southwark."

Medical witnesses.

Attendance and Remuneration of Medical Witnesses at Inquest.]—The coroner ought, it seems, to examine a medical witness as to the cause of the death. (*R.* v. *Quende*, 4 *C. & P.* 571).

6 & 7 Will. 4, c. 89.

Coroner empowered to summon medical witnesses, and to direct the performance of a post-mortem examination.

By stat. 6 & 7 Will. IV. c. 89, intituled "An Act to provide for the Attendance and Remuneration of Medical Witnesses at Coroners' Inquests," [17th August, 1836,] reciting "whereas it is expedient to provide for the attendance of medical witnesses at coroners' inquests, also remuneration for such attendance, and for the performance of post-mortem examinations at such inquests;" it is enacted, "that from and after the passing of this act, whenever upon the summoning or holding of any coroner's inquest it shall appear to the coroner that the deceased

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6 & 7 Will. 4. c. 89.

person was attended at his death or during his last illness by any legally qualified medical practitioner, it shall be lawful for the coroner to issue his order, in the form marked (A.) in the schedule hereunto annexed (*post*, p. 56), for the attendance of such practitioner as a witness at such inquest; and if it shall appear to the coroner that the deceased person was not attended at or immediately before his death by any legally qualified medical practitioner, it shall be lawful for the coroner to issue such order for the attendance of any legally qualified medical practitioner being at the time in actual practice in or near the place where the death has happened; and it shall be lawful for the coroner, either in his order for the attendance of the medical witness, or at any time between the issuing of such order and the termination of the inquest, to direct the performance of a post-mortem examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness or witnesses who may be summoned to attend at any inquest; provided that if any person shall state upon oath before the coroner that in his or her belief the death of the deceased individual was caused partly or entirely by the improper or negligent treatment of any medical practitioner or other person, such medical practitioner or other person shall not be allowed to perform or assist at the post-mortem examination of the deceased."

A majority of the jury may require the coroner to summon additional medical evidence if the first be not satisfactory.

2. "Whenever it shall appear to the greater number of the jurymen sitting at any coroner's inquest, that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner or other witness or witnesses who may be examined in the first instance, such greater number of the jurymen are hereby authorized and empowered to name to the coroner in writing any other legally qualified medical practitioner or practitioners, and to require the coroner to issue his order, in the form hereinbefore mentioned, for the attendance of such last-mentioned medical practitioner or practitioners as a witness or witnesses, and for the performance of a post-mortem examination, with or without any analysis of the contents of the stomach or intestines, whether such an examination has been performed before or not; and if the coroner, having been thereunto required, shall refuse to issue such order, he shall be deemed guilty of a misdemeanor, and shall be punishable in like manner as if the same were a misdemeanor at common law."

Fees to medical witnesses to be paid out of funds collected for relief of the poor.

3. "When any legally qualified medical practitioner has attended upon any coroner's inquest in obedience to any such order as aforesaid of the coroner, the said practitioner shall for such attendance at any inquest in Great Britain be entitled to receive such remuneration or fee as is mentioned in the table marked (B.) in the schedule hereunto annexed (*post*, 56); and for any inquest held in Ireland, the said practitioner shall be paid in the manner provided by the laws in force in that part of the united kingdom; and the coroner is hereby required and commanded to make, according to the form marked (C.) in the schedule hereunto annexed (*post*, p. 57), his order for the payment of such remuneration or fee, when the inquest shall be held in Great Britain, and such order may be addressed and directed to the churchwardens and overseers of the parish or place in which the death has happened; and such churchwardens and overseers, or any one of them, is and are hereby required and commanded to pay the sum of money mentioned in such order of the coroner to the medical witness therein mentioned, out of the funds collected for the relief of the poor of the said place."

No fee for a post-mortem examination instituted without order from the coroner.

4. "Provided nevertheless, and be it further enacted, that no order of payment shall be given, or fee or remuneration paid, to any medical practitioner for the performance of any post-mortem examination which may be instituted without the previous direction of the coroner."

Inquests on bodies of persons dying in public institutions.

5. "Provided also, and be it further enacted, that when any inquest shall be holden on the body of any person who has died in any public hospital or infirmary, or in any building or place belonging thereto, or

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6 & 7 Will. 4, c. 89.

used for the reception of the patients thereof, or who has died in any county or other lunatic asylum, or in any public infirmary or other public medical institution, whether the same be supported by endowments or by voluntary subscriptions, then and in such case nothing herein contained shall be construed to entitle the medical officer whose duty it may have been to attend the deceased person as a medical officer of such institution as aforesaid to the fees or remuneration herein provided."

Penalty on medical practitioner for neglecting to attend

6. "Where any order for the attendance of any medical practitioner as aforesaid shall have been personally served upon such practitioner, or where any such order not personally served shall have been received by any medical practitioner in sufficient time for him to have obeyed such order, or where any such order has been served at the residence of any medical practitioner, and in every case where any medical practitioner has not obeyed such order, he shall for such neglect or disobedience forfeit the sum of five pounds sterling, upon complaint thereof made by the coroner or any two of the jury before any two justices having jurisdiction in the parish or place where the inquest under which the order issued was held, or in the parish where such medical practitioner resides; and such two justices are hereby required, upon such complaint, to proceed to the hearing and adjudication of such complaint, and, if such medical practitioner shall not show to the said justices a good and sufficient cause for not having obeyed such order, to enforce the said penalty by distress and sale of the offender's goods, as they are empowered to proceed by any act of parliament for any other penalty or forfeiture."

Act not to extend to Scotland.

7. "Nothing in this act contained shall extend to Scotland."

The schedule given by this act will be found, *post*, 56, 57.

Who may be present at inquest

Who may of right be present.]—Much doubt and discussion have arisen as to the power of the coroner to exclude individuals from the inquest. It may now, however, be fairly inferred from the late case of *Garnett* v. *Ferrand*, (6 *B. & Cres.* 611; 9 *D. & R.* 657), that the coroner has the power of excluding not only particular individuals, attorneys and counsel, &c., but the public generally. It was held in that case, that no action would lie against a coroner for excluding a party from an inquest. The coroner should, however, exercise his own discretion fairly and not arbitrarily; and it is advisable that he should receive evidence on all hands. It is neither reasonable nor just to exclude persons who have an interest in the event and have a right to tender evidence, and it would be most inconvenient to inquire in each particular case whether there is an interest to protect or not. (*See Daubney* v. *Cooper*, 10 *B. & Cres.* 237; *Collier* v. *Hicks*, 2 *B. & Ad.* 663. The Prisoner's Counsel Act, 6 & 7 Will. IV. c. 114, (*see tit.* "*Conviction*," *Vol. I.*) does not apply to coroners' inquests).

Adjourning inquest.

Adjourning Inquest.]—If the place where the body is be an inconvenient one for the purpose of holding the inquest, or if any of the witnesses be absent, or affected by undue influence, or unwilling to attend, or there be any other good cause why the inquest cannot be properly completed, the coroner may adjourn it to another time or place, informing the jury when and where they are again to meet, and first taking the jurors' recognisance for their appearance at the adjournment time or place. (*See Umfr. Cor.* 179; 2 *Hawk.* c. 9, s. 25). The adjournment need not be stated on the face of the inquisition.

The verdict.

The verdict.]—It is peculiarly the province of the jury to investigate and determine the facts of the case; they are neither to expect nor should they be bound by any specific or direct opinion of the coroner upon the whole of the case, except so far as regards the verdict, which, in point of law, they ought to find as dependent and contingent upon

their conclusions in point of fact. But in questions of law, juries ought to ask and shew the most respectful deference to the advice and recommendation of the coroner; *ad quæstionem facti non respondent judices, ad quæstionem legis non respondent juratores.* (*Vaugh. Rep.* 160). The verdict should be compounded of the facts as detailed to the jury by the witnesses, and of the law as stated to them by the court. (*See Jervis*, 225, 226).

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Formerly the jury might from their own cognisance of the fact have returned a verdict without any evidence being adduced before them. (1 *Vent.* 67). But this is not so now, and if a juryman can give evidence, he should be sworn, and give it in the ordinary way as other witnesses. (1 *Salk.* 405).

If twelve of the jury cannot agree in their verdict, the jury are to be kept without meat, drink, or fire, until they return their verdict. Even this may sometimes be ineffectual, and in such cases they should be adjourned to the next assizes, when they may have the benefit of the opinion and direction of the judge who presides. (*Comb.* 386; *Jerv.* 229).

Form of inquisition.

Form of the Inquisition.]—Immediately after the jury have pronounced their verdict, the same should, together with all the material proceedings at the inquest, be put into writing, and engrossed on parchment indented. The coroner, with his name and style of office, and all of the jurymen, to the number of twelve or more, who found the verdict, should sign the inquisition. The signatures should be in full, stating both the Christian and surnames of each juror. The mere initials would suffice, unless perhaps in the case of the Christian name appearing in full in the caption. (*See* 1 *Nol.* 141; *R.* v. *Evett*, 6 *B. & Cres.* 247; 9 *D. & R.* 237; 7 Geo. IV. c. 64, s. 4). It seems unnecessary to seal the inquisition, though usual so to do. (*See Jerv.* 271).

Signatures to.

Sealing

Time of making it

It does not appear when this formal inquisition should be drawn up, but it is usual and best it should be so before the jury are dispersed.

General requisites.

The *general requisites* of this inquisition are the same as those of an indictment. (*See "Indictment," Vol. III*).

The statement of the facts therein must be with legal certainty and precision, with no repugnancy or inconsistency, and be direct and positive. Mere superfluous statements may be rejected.

Formal parts.

The formal parts of an inquisition in general consist in the statement of the *venue*, the *place* where the death took place and inquisition was held, so as to shew the coroner has jurisdiction, the *time* of the death and holding the inquisition, the *coroner's name* and title of office, the *view* of the body, the *name* of the *deceased* if known, the taking of the *oath* by all the jurors, the *jurors* being good and lawful men, their *verdict* or finding, and lastly, the *attestation.*

Venue and place.

The *venue* and *place* at which the inquisition is holden must appear on the face of the inquisition. (2 *H. P. C.* 166). If the inquisition do not state any place at all at which the inquisition is holden (*Buckler's case, Dyer*, 69); or do not shew with sufficient certainty that the place stated is within the jurisdiction of the coroner (*Thorney's case, Cro. Jac.* 276, 277); as if it state that the inquisition was holden at B., without shewing in what county B. is, otherwise than by putting the county in the margin, it is insufficient, and the inquisition may be quashed. (2 *Hawk. P. C.* c. 25, s. 128). But it is not necessary again to name the county in the margin, if it be referred to by the words "county aforesaid;" and it has been adjudged that the caption of an inquisition as taken at B. before J. S. coroner of the King's liberty of B. aforesaid, is good, without expressly shewing that B. is within the liberty of B., for that cannot but be intended. (5 *Rep.* 120, 121; *Jerv.* 248); and it is no objection to a coroner's inquisition *super visum corporis*, that it purports to be taken in county W., where the death happened, whereas the *cause* of death appears by the finding to have oc-

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curred in county S. (*Reg.* v. *The Grand Junction Railway Company*, 11 *Ad. & E.* 128, n.). But where it appeared on the face of an inquisition that the cause of death occurred within the county of Berks, and the death took place within the limits of the borough of Reading, whither the deceased had been removed, and for which borough there was a separate coroner, it seems to have been held, that the borough coroner and a jury of the borough had no jurisdiction to hold an inquest on the body, and the court quashed the inquisition on that ground. (*Reg.* v. *Great Western Railway Company*, *Q. B.*, *T. T.*, 1842).

Form of inquisition

Time of holding.

The inquisition must state the *time* when it was holden, in order to shew that the inquiry is recent. (2 *Saund.* 291). It suffices to state the day of holding without specifying the hour. If it be stated to have been taken upon an impossible day (*R.* v. *Fearnley*, 1 *T. R.* 316); or to have been holden on such a day, in such a year of the King, without ascertaining what king (2 *Hawk. P. C.* c. 25, s. 127); the inquisition is bad, and may be quashed. A caption stating the time in the præterperfect and not in the present tense is insufficient (*id.*); though this is not so in the case of a conviction. (*R.* v. *Hall*, 1 *T. R.* 320). We have seen when the inquisition should be holden, also that it should not be on a Sunday (*ante*, 30); *as to the mode of stating time in general, see tit.* "*Conviction*," *Vol. I.*, "*Indictment*," *Vol. III*).

Name and style of coroner

The *name and style of office of the coroner* must be stated, in order that it may appear that the inquisition was taken before a court of competent jurisdiction. (22 Edw. IV. c. 13; *Sum.* 207; *Staundf. P. C.* 96).

Although the style of office be added, yet the inquisition will be insufficient unless it appear that he was coroner for the district in which the inquisition is taken. (*Dearing's case*, *Cro. Eliz.* 193; 2 *Roll.* 82; 22 Edw. IV. c. 16). But an inquisition before J. S., coroner *in* the county, has been adjudged to be sufficient, without shewing that he was coroner *for* the county, for that cannot but be intended. (2 *Hawk. P. C.* c. 25, s. 119; *Plowd.* 76, 77; *R.* v. *Heydon*, 4 *Rep.* 41; *Jerv.* 250).

View

It must be stated that the inquisition was taken on *view* of the body, which we have seen, (*ante*, 30, 31), is requisite to give the coroner jurisdiction; if not so stated, the inquisition is bad, and may be quashed.

Name of deceased

The *name of the deceased* should be described accurately, or a variance will be fatal. If his name be unknown, he may be described as a person to the jurors unknown; but such a description would it seems be bad, if he were known. (*See R.* v. *Walker*, 3 *Camp.* 264; *R.* v. *Robinson*, *Holt*, *C. N. P.* 595; 2 *H. P. C.* 281; "*Indictment*," *Vol. III*).

Names &c. of jurors.

The inquisition should shew that all the jurors took the oath, also who such *jurors* are, by name, and therefore it is insufficient to allege that it was taken by the oaths of the several persons underwritten (*R.* v. *Evett*, 6 *B. & C.* 247; 9 *D. & R.* 237); or of A. B., C. D., and others. (2 *H. P. C.* 168). So, although it is not necessary that the jury should come from the next adjoining townships, (*ante*, 29), it must expressly appear that they are from the county or jurisdiction within which the inquiry is holden, that they are at least twelve in number (*ante*, 29); but see *Lambert* v. *Taylor*, (6 *D. & R.* 188; 4 *B. & C.* 138, *S. C.*); and also that they present the inquisition upon their oaths. (2 *Hawk. P. C.* c. 25, s. 126). Lord *Hale* (2 *H. P. C.* 167) was of opinion that the inquisition should appear to have been taken by the oaths of honest and lawful men, as well in the case of coroners' inquests, as in that of other indictments and presentments; but this is said to be unnecessary, and has been so held in the case of indictments in the superior courts, because, until the contrary be proved, all men shall be intended to be *probi et legales*. (2 *Hawk. P. C.* c. 25, s. 17, 126).

On application to quash a coroner's inquisition, the ground of objection appeared to be, that the inquisition stated it to have been taken on the oaths of eleven men, and the affirmation of one man. It was

contended that, although by the late act of the 3 & 4 Will. IV. c. 49, Quakers or Moravians might act on inquisitions, yet it must appear that the person affirming was either a Quaker or a Moravian. *Parke*, J., was of opinion, "that it ought to appear on the face of the inquisition that the one man affirming was either a Quaker or a Moravian;" and he accordingly directed the inquisition to be quashed. (*R.* v. *Polfield*, 2 *Dowl. P. C.* 469).

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Care should also be taken to insert the names of the jurors accurately, for if there be a variance between the names of the jurors in the caption and those in the attestation, it will be fatal. (*R.* v. *Huggins*, 3 *C. & P.* 414; *Jerv.* 252, 253). But if the jurors' names be set out at full length in the caption of an inquisition, it is immaterial whether they sign at the foot with the initials only of their Christian names; (*Reg.* v. *Brownlow*, 11 *Ad. & E.* 119); and if some of the jurors be marksmen, and their marks are not attested, the inquisition will be bad on that ground. (*Reg.* v. *Stockdale*, 8 *Dowl. P. C.* 507).

The party charged.

If the inquisition contain matter of *accusation* against a party, such party should be described as accurately as a party should in an indictment against him. An inquisition stated in substance, that J. D., on the 27th of May, struck M. R. with a poker on the head, and with his hands on the breast, and gave her divers mortal bruises and contusions; and that M. F. on the 23rd of June kicked the said M. R. on the belly, and thereby gave her one mortal bruise and contusion. It then averred that the said M. R. of the mortal bruises &c. given by J. D. languished from the 27th of May until the 1st of July, and of the mortal bruise &c. given by M. F. languished from the 23rd of June till the 1st of July, and then died of the mortal bruises and contusions on the head and breast, together with the mortal bruise and contusion on the belly. The conclusion was, that the said J. D. and the said M. F., her the said M. R., in manner and by the means aforesaid, feloniously did kill and slay:—The court directed the inquisition to be quashed. (*Reg.* v. *Dovett*, 8 *Car. & P.* 639; *see also Rex* v. *Mitchell*, 7 *C. & P.* 800; *Rex* v. *Nicholas*, 7 *C. & P.* 538; *and see tit.* "*Indictment*," *Vol. III. for further information on this head*).

Time and place.

The time and place when and where the party is charged with having committed the offence should be also specified as accurately and properly as in an indictment. In *R.* v. *Evett*, (6 *B. & Cres.* 247; 9 *D. & R.* 237), an inquisition was quashed because it did not state where the party died, or where the body was found. The day and year when the alleged crime took place should be stated. (2 *Hawk.* c. 25, s. 77; 2 *H. P. C.* 177). The hour need not be stated. (*Combe* v. *Pitt*, 3 *Burr.* 1434). The inquisition ought to point out the precise time at which the accident happened that caused the death of the deceased, and also the precise time at which the death took place. And therefore, where a coroner's inquest found, that, on &c., at &c., one A. B., being on board a certain steam-boat, which was then and there being floated and navigated on the Thames, it so happened that a certain boiler, then and there forming part of a steam-engine in and on board of the said steam-vessel, which said boiler was then and there used in the working of the said steam-engine, burst and exploded, and the boiling water was thereby cast upon A. B., whereby A. B. then and there received a mortal shock and concussion, of which said mortal shock &c. A. B. instantly died:—it was held, that the day of the explosion and of the death did not sufficiently appear, and therefore the court quashed the inquisition. It was considered, that the words "of which &c. the deceased instantly died," did not supply the place of the words "then and there instantly died." (*Reg.* v. *Brownlow*, 11 *Ad. & E.* 119). One inquisition may be taken on the dead bodies of several persons who have been killed by the same cause and died at the same time. (*Reg.* v. *West*, 1 *Gale & D.* 481). (*See further as to the statement of time and place, ante*, "*Conviction*," *Vol. I.; and post, tit.* "*Indictment*," *Vol. III*).

7. *Power and Duty on an Inquest.*

Act causing death

The *act causing the death* must be stated accurately as in an indictment, otherwise the inquisition may be quashed. And if a coroner's jury find that the death of A. was occasioned by means of a locomotive engine of B. being driven against him, and that the same did "feloniously cast to the ground the said A.:" it is not a sufficient description of the cause of the death of A. (*Reg.* v. *Stockdale and Darlington Railway Company*, 8 *Dowl. P. C.* 517). (*See Jerv.* 263).

Deodands.

With a view to the deodand the inquisition should distinctly shew what caused the death, and its value, and to whom it belonged, and in case of death caused by the falling of a building, it should state what part of the materials caused such death, and their value. (*R.* v. *Coroner &c. of London, Exp. Carruthers*, 2 *M. & R.* 397). And where a coroner's inquisition stated, that the proprietors of two locomotive engines carelessly and improperly caused and permitted them to be used on a railway, by means whereof the engines were propelled against each other, and a person riding on one of them was killed; that the engines were moving to and the cause of the death, and were of the value respectively of &c., and the property of &c., and that the jury exonerated the men employed on the engines from blame:—*quære*, whether, on such finding, the engines, as having moved to the death of the party killed, were deodand. At all events, where the facts are so stated, the court will not quash the inquisition entirely or in part, on the ground that upon such an inquisition a deodand has been improperly claimed. (*Reg.* v. *The Grand Junction Railway Company*, 11 *Ad. & E.* 126, n.) And if a coroner's jury find a verdict of manslaughter, the value of anything supposed to be moving to the death may be found, so that it may afterwards be forfeited, if, on an indictment for the manslaughter, a conviction should follow. But an express finding of a deodand on an inquisition for manslaughter is bad, deodands being legal only in cases of death by misadventure. (*Reg.* v. *Polwart*, 1 *Gale & D.* 211; 9 *Dowl. P. C.* 104).

Where the jury found that they *believed* a post to be the only cause of the death, the inquisition was quashed. (*Anon.*, 12 *Mod.* 112). So an inquisition has been quashed for not setting forth the wound, and that it was mortal. (*Reg.* v. *Clerk*, 1 *Salk.* 377; *Holt*, 167, *S. C.*; 7 *Mod.* 16). And in a case where an inquisition alleged the engine and carriages, which it had found to have been moving to the death, to be in the possession of and belonging to "the proprietors of the Hull and Selby Railway Company and the proprietors of the Leeds and Selby Railway Company:"—it was held, that such a description of ownership was insufficient. (*Reg.* v. *West*, 1 *Gale & D.* 481). An inquisition may be good in part, and bad for the residue, if such residue can be separated from the other part; as, if the inquisition be bad as to the deodand, that part of it may be quashed and the rest stand. (*Ex parte Carruthers*, 2 *Man. & R.* 397). (*See further as to deodands, post, tit.* "*Deodands*").

Enrolling proceedings.

Enrolling Proceedings.]—All which things must be enrolled in the rolls of the coroner. (4 Edw. I. st. 2).

And the sheriff shall have counter rolls with the coroner of things belonging to their office. (3 Edw. I. c. 10).

Binding witnesses to prosecute, and issuing warrant against offender.

Binding Witnesses to Prosecute, &c. and Issuing Warrant against Offender.]—If the verdict be of that description that future proceedings will be necessary, the coroner must bind by recognisance all such persons as know anything material touching the offence, to appear at the court into which the inquisition is to be returned, then and there to prosecute and give evidence against the party charged. (7 Geo. IV. c. 64, s. 4, *ante*, 32).

The coroner must, where the verdict charges a person with having murdered the deceased, or manslaughtered him, issue his warrant to

apprehend the offender, and commit him to prison (1 *Chit. C. L.* 164); or if he be already in prison, the coroner should issue a detainer to the gaoler.

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Burial of deceased.

Burial of Deceased.]—After the proceedings are closed, or before, if it be necessary, the coroner should issue his warrant for the burial of the body or bodies upon which the inquest has been taken, and the burial must take place accordingly. (4 Edw. I. st. 2).

As to the burial of a *felo de se*, *see* "*Homicide*," *Vol. III.*

Publishing proceedings.

Publishing Proceedings.]—It is illegal to publish a statement of the evidence given before the coroner's jury, even though it be correct, and the party publishing it be not actuated by any malicious motives. (*R.* v. *Fleet*, 1 *B. & Ald.* 379; and see *R.* v. *Fisher*, 2 *Camp.* 563; *Duncan* v. *Thwaites*, 3 *B. & Cress.* 556; 5 *D. & R.* 447, *S. C.*; *R.* v. *Clement*, 4 *B. & Ald.* 218; *see* "*Libel*," *Vol. III*).

Return of inquisitions, &c.

7 Geo. 4, c. 64, s. 4

Return of Inquisition, Evidence, and Recognisance, &c.]—The stat. 7 Geo. IV. c. 64, s. 4, which repeals the stat. 1 & 2 P. & M. c. 13, enacts, "That the coroner, upon any inquisition before him taken, whereby any person shall be indicted for manslaughter or murder, or as an accessary to murder before the fact, shall put in writing the evidence given to the jury before him, or as much thereof as shall be material, and shall have authority to bind by recognisance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next court of oyer and terminer, or gaol delivery, or superior criminal court of a county palatine, or great sessions, at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognisances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before or at the opening of the court."

Fining for default.

By sect. 5. "If any justice or coroner shall offend in any thing contrary to the true intent and meaning of these provisions, the court, to whose officer any such examination, information, evidence, bailment, recognisance, or inquisition, ought to have been delivered, shall, upon examination and proof of the offence in a summary manner, set such fine upon every such justice or coroner as the court shall think meet."

Applicable to all coroners.

By sect. 6. "All these provisions relating to justices and coroners shall apply to the justices and coroners, not only of counties at large, but also of all other jurisdictions."

Attending court, return &c of inquisitions of *felo de se*, &c.

Coroners ought also to attend personally upon the Court of Queen's Bench, and to deliver to the proper officer all inquisitions of *felo de se.* (*Jervis*, 41).

It is the duty of a coroner to be present at the assizes or the gaol delivery at the Old Bailey when any case is tried on an inquisition taken before him; and if he be not present, the court may fine him. (*In re Unwin*, *Q. B.* 1827, *Car. C. L.* 17).

Return of deodands.

3 & 4 Will 4, c. 99.

By the 3 & 4 Will. IV. c. 99, s. 29, an account in writing of all *deodands* found or forfeited to or for the use of his Majesty shall, within fourteen days after such deodands shall accrue, be made out by the coroners, with the names and residences of the parties liable, and transmitted to the treasury and to the commissioners of audit, and also certified and estreated into the Court of Exchequer. And a rule to discharge the estreat of a deodand returned into the Court of Exchequer under this act, is *nisi* only in the first instance, and should be served on the solicitor to the Treasury, who may undertake to discharge the estreat by a Treasury warrant. (*Reg.* v. *London and Birmingham Railway Company*, 1 *Dowl. N. S.* 15). (*See* "*Fines and Estreats*," *Vol. III*).

7. *Power and Duty on an Inquest.*

Defects in Inquisition, how taken advantage of.

Defects in Inquisition, how taken advantage of.]—If the inquisition be defective in any of the particulars before pointed out as requisite thereto, if a party be accused by the inquisition and appear in the Court of King's Bench, on the return of such inquisition into such court, he may demur to it, or move in arrest of judgment, or, what is more usual, may apply to the Court of King's Bench to get it quashed. And the latter course is not unusually adopted where a party interested in the deodand (if any) is desirous of getting rid of such deodand, the record of the inquisition being removed into the court by *certiorari*. But it was observed in a recent case, that though the court will sometimes quash an inquisition on motion for palpable defects, the most convenient course is to put the party contesting it to demur. (*Reg.* v. *Brownlow*, 11 *Ad. & E.* 119).

Where the inquisition is so defective that no judgment can be given upon it, the court will in general quash it, and where it contains the subject-matter of accusation, this is done by the court before which the party is arraigned, and the application, if made upon the part of the defendant, ought regularly to be made before the plea pleaded (*Fost. C. L.* 231; *Holt.* 684; 4 *St. Tr.* 677); although, if the defect be manifest, the court will in general entertain the application at any time before the verdict is delivered. (*Jervis*, 285).

In a recent case, the court, on the application of the crown, set aside a coroner's inquisition for defects apparent on the face of it; and the rule was absolute in the first instance. (*In re Culley*, 2 *Nev. & M.* 61; 5 *B. & Ad.* 230).

The inquisition may be good in part and bad for the residue, and quashed accordingly as to the bad part; as where it is bad so far as relates to the deodand, or where there are two substantial findings, and one of them bad. (*Exp. Carruthers*, 2 *M. & Ry.* 397; *R.* v. *Coroner, &c. of London*, cited *Jerv. Ad.* 408).

In addition to the objections arising upon the face of the inquisition, it may be quashed for the misconduct of either the coroner or the jury; (*R.* v. *Hethersal*, 3 *Mod.* 80; *Jerv.* 287); as where the coroner fraudulently directed the jury to find a verdict of *felo de se*, telling them that it was in effect the same as a finding of lunacy, the court quashed the inquisition (*R.* v. *Wakefield*, 1 *Stra.* 69; and see *R.* v. *Stukeley*, 12 *Mod.* 493); so the court will quash an inquisition taken without a view of the body, for the view ascertains the cause of the death, and is an essential part of the evidence (*ante*, 929); and, in like manner, where, from the decomposition of the body, no information can be derived from the view, the inquisition may be quashed upon an affidavit of the circumstances. (*R.* v. *Bond*, 1 *Stra.* 22; 2 *Hawk. P. C.* c. 9, s. 24; *Jerv.* 287).

Defects not aided by statute.

Defects in Inquisition not aided by Statute.]—It should be observed that the statute of jeofails, and the late act 7 Geo. IV. c. 64, s. 20, which cures many trifling defects in indictments, do not extend to coroners' inquisitions.

Amending Inquisitions.

Amending Inquisitions.]—The Court of Queen's Bench have a discretionary power to amend coroners' inquisitions in furtherance of justice. This power is exercised according to the circumstances of each particular case. It seems, however, that it is only of *formal* defects, and not of *substantial* ones, that this amendment can be made. (*See R.* v. *Evett*, 6 *B & Cres.* 251; 9 *D. & R.* 237; 2 *Hawk.* c. 25, s. 97; *R.* v. *Harrison*, 1 *Sid.* 225; *R.* v. *Glover*, *id.* 259; *R.* v. *Saloway*, 3 *Mod.* 101; 1 *Saund.* 356). Where the inquisition omitted to state the place where the death happened or where the body was found, and in the body of the inquisition the names of the jurors were not inserted, and the jurors had only signed with initials, so that the exact names of the jurors nowhere appeared; it was held, that these were all defects of substance, and not

amendable in the Court of Queen's Bench. (*R.* v. *Evett*, 6 *B. & Cres.* 247; 9 *D. & R.* 247),

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An inquisition found that the death was occasioned by the upsetting of a mail-coach, the property of Peter Purcell & Co., the court refused, on an affidavit stating the names of all the proprietors, to strike out the word "Co." and insert the names of the other proprietors. (*Rex* v. *Purcell*, 1 *Cooke & Alcock*, 104).

It should be observed also, that the 20th section of the statute 7 Geo. IV. c. 64, does not apply to coroners' inquisitions. (*See this section*, "*Indictment*," *Vol. III*).

Before the amendment can be made, the inquisition must be in court, for which purpose a *certiorari* must be issued to the coroner to return the inquisition to the Crown Office, where it is filed. After this a *venire facias* is issued to bring the coroner into court to make the amendment, in obedience to which he attends personally at the Crown Office, where the amendment is made. (*Comb.* 58). As to the mode of obtaining this *venire facias*, Mr. *Jervis* says, p. 281, the best course is to apply in term to the Court of Queen's Bench for a rule, or in vacation to a judge at chambers for a summons, to shew cause why the amendment should not be made, and why the *venire facias* should not issue to bring the coroner into court, and the rule or summons should be served on the coroner or parties interested, upon the discussion of which the propriety of the amendment may be entertained, and if allowed, the *venire facias* will be issued.

Proceedings where inquisition quashed.

Proceedings where Inquisition quashed.]—Where an inquisition is quashed a new inquiry may by leave of the court (*R.* v. *Saunders*, 1 *Stra.* 167) be instituted by the coroner, (*R.* v. *Hethersal*, 3 *Mod.* 80), the body being disinterred by order of the Court of Queen's Bench, which will exercise a discretion in making or refusing the order, according to the circumstances of the case and the length of time the body has been buried, (*Reg.* v. *Clerk*, 1 *Salk.* 377; *R.* v. *Bond*, 1 *Stra.* 22; *Anon.* 30, *id.* 533; *ante*, 30).

But where there is any imputation upon the coroner he shall not again interfere in the inquiry, but a *meliùs inquirendum* may be awarded to take a new inquisition by special commissioners, who shall proceed by the testimony of witnesses, without viewing the body. (*R.* v. *Bunney*, 1 *Salk.* 190; *ante*, 30; *Jerv.* 287).

Effect of inquisition.

When traversable.

Effect of Inquisition.]—It appears by the best authorities, that the inquests of the coroner are in no case conclusive, and that one affected by them, either collaterally or otherwise, may deny their authority and put them in issue. (*R.* v. *Parker*, 3 *Keb.* 489; *see Garnett* v. *Ferrand*, 6 *B. & Cres.* 615, 627; 9 *D. & R.* 657, *S. C.*; *R.* v. *Evett*, *id.* 247). And it is now settled that an inquisition of *felo de se* may be removed into Q. B., and traversed by the executors or administrators of the deceased. (1 *Saund.* 363, n. (*s*).) Doubts have been entertained whether inquisitions of flight and *felo de se* are traversable, but it seems they are. (*See Jerv.* 282 *to* 284; 1 *Saund.* 362, n.)

Inquisition equivalent to finding of a grand jury.

Where the inquisition contains the subject-matter of accusation of any person, it is equivalent to the finding of a grand jury, and such person may be tried and convicted on it. (2 *Hale*, 61). And if an indictment be found for the same offence, and the defendant be acquitted on the one, he must be arraigned on the other, to which he may, however, effectually plead his formal acquittal. (2 *Hale*, 61; *Reg.* v. *Culliford*, 1 *Salk.* 382).

The finding of the grand jury is regarded as of more weight than an inquisition taken before the coroner; as the court will, in their discretion, bail after the latter, but always refuse after the former; the reason of which may be, that in one case they can look into the depositions, to see if the evidence supports the charge of murder, whereas in

9. *His Fees.*

the other, the investigation is secret, and does not admit of a summary revision. (*R.* v. *Dalton*, 2 *Stra.* 911 ; *R.* v. *Magrath*, *id.* 1242).

Trial.

It is the practice to prefer an indictment to the grand jury, and to try the party accused upon both proceedings at the same time, by which means the form of a second trial is rendered unnecessary. (*R.* v. *Culliford*, 1 *Salk.* 382).

Coroner's warrant of apprehension

When a coroner's jury have found that a party has murdered the deceased, the coroner may issue his warrant to apprehend him, and may commit him to prison ; he has also power to summon witnesses, and bind over persons to prosecute and give evidence. (1 *Chit. C. L.* 163, 164).

VIII. His Power and Duty in other Matters.

Treasure trove.

By stat. 4 Edw. I. st. II. he ought to inquire of treasure that is found ; who were the finders, and likewise who is suspected thereof ; and that may well be perceived, where one liveth riotously, haunting taverns, and hath done so of long time : hereupon he may be attached for this suspicion by four, or six or more pledges, if they may be found. (*See* 2 *Hawk.* c. 9, s. 36).

Wrecks.

Coroners may inquire of wrecks and royal fishes, as sturgeons, whales, and the like. (*Staundf.* 51 ; *Bract.* 120 ; *Britt.* s. 42 ; *Jerv.* 34).

Executing process.

Besides his judicial place, he hath also an authority ministerial as sheriff ; namely, when there is just exception taken to the sheriff, judicial process shall be awarded to the coroner, for the execution of the King's writs ; and in some special cases, the King's original writ shall be immediately directed to him. (4 *Inst.* 271 ; *see Tidd*, 9*th edit.*).

As to juries

As to his duties of office as to juries, *see R.* v. *Dolby*, 2 *B. & Cres.* 104 ; 3 *D. & R.* 311, "*Jurors*," *Vol. III.*

Outlawry.

He is bound to be present in the county court, to pronounce judgment of outlawry upon the exigent, after *quinto exactus* at the fifth court, if the defendant doth not appear. (*Wood's Inst.* b. 4, c. 1 ; *Watson's Sheriff*, c. 8).

Returning inquisitions, &c.

As to his duty in returning inquisitions and being present at trials, *see ante*, 41.

As conservator of the peace.

As to his power and duty as conservator of the peace, to arrest, and suppress affrays, &c. "*see Arrest*," *Vol. I.*

Deputy.

We have already seen that the coroner cannot in general proceed by deputy, *ante*, 28.

IX. His Fees.

Formerly none.

Anciently the coroner had no fees. (1 *Com.* 347).

Fee of 13*s.* 4*d.*

By the statute of 3 Hen. VII. c. 1, the coroner shall have for his fee, upon every inquisition taken upon the view of the body slain, 13*s.* 4*d.* of the goods and chattels of him that is the slayer or murderer, if he have any goods ; and if not, he shall have for his said fee of such amerciaments as shall fortune any township to be amerced for escape of such murderers. So also stat. 25 Geo. II. c. 29, s. 3, 4.

Fee of 20*s* and also 9*d.* a mile.

Moreover, by stat. 25 Geo. II. c. 29, s. 1, for every inquisition (not taken upon view of a body dying in gaol) which shall be duly taken in any township or place contributing to the rates directed by stat. 12 Geo. II. c. 29, (the County Rate Act), he shall have 20*s.* and also 9*d.* for every mile he shall be *compelled* to travel *from* his usual place of abode to take such inquisition ; to be paid by order of the justices in sessions out of the *county rates* ; for which order no fee shall be paid. (*See R.* v. *Justices of Warwick*, *post*, 940 ; "*County Rate*," *post*).

Sect. 2. "And for every inquisition taken on view of a body dying

in prison, he shall be paid so much, not exceeding 20*s.*, as the justices in sessions shall allow, to be paid in like manner."

9. *His Fees.*

Sect. 5. "But no coroner of the King's household, and of the verge of the King's palaces, nor any coroner of the admiralty, nor of the county palatine of Durham, nor of the city of London and borough of Southwark, or of any franchises belonging to the said city, nor of any city, town, or franchise not contributory to the county rates, or within which such rates have not been usually assessed, shall be entitled to any benefit by this act; but they shall have such fees and salaries as they were allowed before this act, or as shall be allowed by the persons by whom they have been appointed. (*See R.* v. *Justices of W. R. of Yorkshire*, 7 *T. R.* 52).

Not to apply to certain coroners.

A coroner under this statute is not entitled to any compensation for the miles travelled by him in returning to his usual place of abode *from* taking an inquisition. (*R.* v. *Justices of Oxfordshire*, 2 *B. & Ald.* 203). *W. E. Taunton* had obtained a rule *nisi* for a *mandamus* to the defendant to make an order for paying one *Cecil*, a coroner for that county, a certain sum of money out of the county rates, being a compensation, at the rate of 9*d.* per mile, for the several miles travelled by him as coroner *in returning to his usual place of abode*, from taking several inquisitions set forth in his affidavits. After argument of the case, *per Curiam*, "The words are, that the coroner shall be allowed 9*d.* per mile *for every mile he is compelled to travel* from *the place of his abode to take the inquisition.* The two *termini* are therefore clearly pointed out, and the coroner can only charge for the miles between them. Now the miles he travels in returning are obviously not *from* his usual place of abode, and therefore there is no pretence for this charge. Besides, at the time of the passing of the act (which is the proper period to be considered) this was an ample compensation." Rule discharged with costs.

No fee for returning.

In *R.* v. *Justices of Kent* (11 *East*, 229), it was held discretionary in the justices whether they will allow the fee under stat. 25 Geo. II. c. 29, s. 1; they are judges whether the inquisition was *duly taken;* and the coroner has not *necessarily* a right to inquire of all such deaths as are not natural.

Discretionary in justices to allow

A coroner cannot have a fee for taking an inquest on a dead body manifestly drowned on the high seas and cast on shore. (*R.* v. *Justices of Yorkshire* (*W. R.*), 7 *T. R.* 52).

Inquest on body drowned at sea.

The coroner is allowed only for every mile which he is *compelled* to travel from the usual place of his abode to take the inquisition. Therefore, where there are several inquisitions taken at the same place, and upon one journey, he cannot claim mileage for his travelling expenses for more than one inquisition. (*R.* v. *Justices of Warwick*, 8 *D. & R.* 147; 5 *B. & Cres.* 430, *S. C.*).

Where two inquests.

On an inquest taken on a dead body, under 25 Geo. II. c. 29, the inquisition must, in order to entitle the coroner to his fee, be signed by all the jurors. (*R.* v. *Justices of Norfolk*, 1 *Nolan*, 14).

Inquest must be signed by all the jurors.

Coroners of such places and franchises as do not contribute to the county rates cannot claim fees under the 25 Geo. II. (*R.* v. *Justices of Yorkshire* (*W. R.*), 7 *T. R.* 52).

Places not contributing to county rate.

Should the justices improperly refuse to allow fees to a coroner, his only mode of compelling them to make the allowance, or of trying his right to such as may be questionable, is to apply to the Court of King's Bench for a *mandamus*. In which case the writ must allege all the circumstances of the case, must shew that he is entitled to the relief prayed, and that he had a right to call upon the magistrates to do that, for the non-performance of which the writ was sued out. (*R.* v. *Justices of Yorkshire* (*W. R.*), 7 *T. R.* 52). If there be any thing criminal in the refusal, the magistrate might be indicted, or have a criminal information filed against him.

Mandamus to compel allowance of fees.

As to the coroner's fees in boroughs, *see post*, "*Corporations.*"

In boroughs.

11. *Punishment for not doing his Duty.*

Exempt from offices.

Arrest.

X. Other Privileges.

Coroners are exempted from serving offices which are inconsistent with the duties of coroner, and are privileged from being summoned on juries. (2 *Roll. Abr.* 632, s. 4; *F. N. B.* 167; *Jerv.* 63).

They are privileged from arrest while in the execution of their judicial duties, and consequently whilst going to, being at, and returning from an inquest. (*See Jerv.* 63).

XI. His Punishment for not doing his Duty.

Concealing felonies, neglecting duty, &c.

3 Hen. 7, c. 1.

25 Geo. 2, c. 29.

Removable from office for extortion or neglect of duty or misbehaviour.

Coroners concealing felonies, or not doing their duty through favour of the misdoers, shall be *imprisoned* a year, and *fined* at the King's pleasure. (3 Edw. I. c. 9).

And by stat. 3 Hen. VII. c. 1, if any coroner be remiss, and make not inquisition upon view of the body dead, and certify the same to the gaol delivery, he shall *forfeit* to the King 100*s*.

And by stat. 25 Geo. II. c. 29, s. 6, if any coroner, not appointed by an annual election or nomination, or whose office is not annexed to any other office, shall be convicted of extortion or wilful neglect of his duty, or misdemeanor in his office, the court before whom he shall be so convicted may adjudge him to be *removed* from his office; and thereupon, if he shall have been elected by the freeholders, a writ shall issue for amoving him, and electing another in his stead; and if he hath been appointed by the lord of any liberty or franchise, or in any other manner than by the freeholders, the person entitled to nomination shall, on notice of such judgment of amoval, nominate another person in his stead.

And see further as to his removal from office, *ante*, 27.

7 Geo. 4, c. 64.

If a coroner do not return the depositions and recognisances pursuant to stat. 7 Geo. IV. c. 64, s. 4, 5, (*ante*, 41), the court may, in a summary way, set such fine upon him as they shall think proper.

Suppressing inquisition.

In one case a coroner was discharged from his office, and fined 100*l*., for not returning an inquisition to the next gaol delivery, but suppressing it. (*Lord Buckhurst's case*, 1 *Keb.* 280).

Influencing jury.

In *R.* v. *Coates* (cited *Dick. Just.* 515), a coroner was discharged from office for using corrupt influence over the jury. And see further when he may be removed, *ante*, 27.

Offence at common law.

At common law if a coroner be guilty of misconduct, an attachment (*Andrews* v. *Sharp*, 2 *Bla. Rep.* 911; *R.* v. *Peckham*, *id.* 1218), or an information or indictment (*R.* v. *Scory*, 1 *Leach*, 43), lies against him: as where he told the jury that a verdict of *felo de se* and lunacy were the same. (*R.* v. *Wakefield*, 1 *Str.* 68). So where he excluded some of the jurors, in order to find the deceased *non compos*. (*R.* v. *Stukeley*, 12 *Mod.* 493). In *R.* v. *Scory*, (1 *Leach*, *C. L.* 43), the coroner charged the jury to find the prisoner guilty of murder: they, however, returned a verdict of accidental death, which the coroner recorded, but committed the prisoner to gaol for murder: upon which the Court of King's Bench granted a rule *nisi* for a criminal information against the coroner.

Where a coroner inserted in the verdict that the jury had found three guilty of murder, instead of one only, he was holden to have committed a forgery. (*R.* v. *Marsh*, 3 *Salk.* 172).

If a coroner take an inquisition without viewing the body, he is criminally to blame; for the view ascertains the cause of the death, and an inquisition can be taken *super visum corporis* only.

In 3 *Inst.* 149, it is stated that a coroner was committed to prison, and fined 40*s*., because he refused to view a body, unless he was paid, for himself 6*s*. 8*d*., and for his clerk 2*s*. But if the body has been so long buried that no information can be obtained from the view, the coroner will not be justified in causing it to be disinterred; and if he do so, it would seem that he may be fined. (*R.* v. *Parker*, 2 *Lev.* 140; *Jerv.* 65).

One coroner is answerable, civilly, for the acts of his co-coroner. (*Naylor* v. *Sharply*, 1 *Mod.* 193; 2 *Mod.* 23, *S. C.*). But no criminal responsibility can attach upon one who is constructively only a participator in the abuse; and therefore where one coroner gave to another a general authority to act in his name, it was held that he was not responsible, criminally, for an abuse of that authority, committed without his concurrence or participation. (*Lord Coningsby* v. *Steed*, 8 *Mod.* 193; see *R.* v. *Huggins*, *Ld. Raym.* 1574; 2 *Stra.* 882, *S. C.*; *Staundf.* 53 a; 2 *Hale*, 59).

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Offence of coroner.

No action lies against a coroner for any act done by him when acting judicially and within the scope of his jurisdiction. (*Garnett* v. *Ferrand*, 6 *B. & C.* 611; 9 *D. & R.* 657; *Floyd* v. *Barker*, 12 *Rep.* 14; *Lutw.* 195, 1560; *Groenvelt* v. *Burwell*, 1 *Ld. Raym.* 454; *Hamond* v. *Howell*, 1 *Mod.* 184; 2 *Mod.* 218, *S. C.*).

Action against for acts done.

The office of coroners for the county of Durham is regulated by the 7 Will. IV. & 1 Vict. c. 64.

Coroners for Durham.

XII. Forms (*a*).

Coroner's Precept to Summon a Jury, (No. 1).

Juror's Oath on the Coroner's Inquest, (No. 2).

Witness's Oath, (No. 3).

Summons for Witness, (No. 4).

Warrant against a Witness for Contempt of Summons, (No. 5).

Commitment of a Witness for refusing to give Evidence, (No. 6).

Inquisition of Murder (No. 7); the like, against Accessaries (No. 8); inquisition where one Hangs himself (No. 9); the like, where one Drowns himself (No. 10); the like, on one Drowned by Accident (No. 11); the like, where one Dies a Natural Death (No. 12); the like, on one who Dies in Gaol (No. 13); the like, on one not *Compos mentis* (No. 14); the like, on one for Cutting his Throat (No 15); the like, for Killing another in his own Defence (No. 16); the like, when the Murderer is unknown (No. 17); the like, on one Killed by a Collision on a Railway (No. 18).

Recognisance of Jurors upon an Adjournment (No. 19).

Proclamation of Adjournment (No. 20); the like Proclamation at Adjourned Meeting (No. 21).

Oath of Officer to keep the Jury until they are agreed in their Verdict (No. 22).

Recognisance to Prosecute (No 23); the like, to give Evidence (No. 24).

Warrant to Bury after a View (No. 25); the like, to Bury a *Felo de se* (No. 26); the like, to take up a Body Interred (No. 27).

Warrant of Apprehension of a Person accused by a Coroner's Inquisition (No. 28).

Commitment thereon (No. 29).

Certiorari to return Inquisition (No. 30).

Return thereto (No. 31).

Venire Facias to amend Inquisition (No. 32).

Inquisition of Treasure Trove (No. 33).

Schedule to 6 & 7 Will. IV. c. 89, as to Expenses of Medical Witnesses.

County of ——, } *To the Constable of* *in the said county.*

(1). Coroner's precept to summon a jury.

BY virtue of my office, these are in her Majesty's name to require and command you, immediately upon sight hereof, to summon and warn twenty-four

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(*a*) See a great variety of useful and valuable Forms collected in Mr. Jervis's work on Coroners, 295 to 405.

12. *Forms.*

good and lawful men of the four next townships to in the said county, to be and appear before me A C, gentleman, one of the coroners of the county aforesaid, at aforesaid, in the said county, on the day of , at of the clock in the noon, then and there to inquire of, do and execute all such things as on her Majesty's behalf shall be lawfully given them in charge, touching the death of A D And be you then and there to certify what you shall have done in the premises, and further to do and execute what in behalf of our said Lady the Queen shall be then and there enjoined you Given under my hand and seal the day of

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(2) Juror's oath on the coroner's inquest

YOU shall diligently inquire and true presentment make on the behalf of our sovereign Lady the Queen how and in what manner A D [or "*a person unknown,*" as the case is,] *here lying dead, came to his death and of such other matters relating to the same as shall be lawfully required of you, according to your evidence So help you God*

After the foreman is sworn, the rest may be sworn, three or four together, as follows

Such oath as A F the foreman of this inquest hath for his part taken, you and every of you shall well and truly observe and keep on your parts respectively So help you God

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(3) Witness's oath

THE evidence which you shall give to this inquest, on the behalf of our sovereign Lady the Queen, touching the death of A D, shall be the truth, the whole truth, and nothing but the truth So help you God

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(4) Summons for witness

—— } *WHEREAS I am credibly informed that you can give evidence on*
to wit } behalf of our sovereign Lady the Queen, touching the death of R F, now lying dead in the parish of , in the said county of , these are, therefore, by virtue of my office, in her Majesty's name, to charge and command you personally to be and appear before me, at the dwelling-house of , known by the sign of the , in the said parish of at of the clock in the noon, on the day of instant, then and there to give evidence and be examined on her Majesty's behalf, before me and my inquest, touching the premises Hereof fail not, as you will answer the contrary at your peril. Given under my hand and seal this day of , &c.

To A B, C D, &c. *A. C Coroner* (L. S.)

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(5) Warrant against a witness for contempt of summons

—— } *WHEREAS I have received credible information that A B, of the*
to wit } parish of , in the said county of , surgeon, can give evidence on behalf of our sovereign Lady the Queen, touching the death of R F, now lying dead in the said parish of , in the county aforesaid, and whereas the said A B (having been duly summoned to appear and to give evidence before me and my inquest touching the premises, at the time and place in the said summons specified, of which oath hath been duly made before me) hath refused and neglected so to do, to the great hinderance and delay of justice these are therefore by virtue of my office, in her Majesty's name, to charge and command you, or one of you, without delay, to apprehend and bring before me, one of her Majesty's coroners for the said county, now sitting at the parish aforesaid, by virtue of my said office, the body of the said A B, that he may be dealt with according to law and for your so doing this is your warrant. Given under my hand and seal this day of , &c

A. C. Coroner. (L. S.)

To all constables, headboroughs, and other her Majesty's officers of the peace in and for the county of and also to E. F my special officer.

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(6) Commitment of a witness for refusing to give evidence

—— } *WHEREAS I heretofore issued my summons under my hand, di-*
to wit } rected to A B requiring his personal appearance before me, then and now one of her Majesty's coroners for the said county of , at the time

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and place therein mentioned, to give evidence and be examined on her Majesty's behalf touching the death of R. F. then and there lying dead; of the personal service of which said summons oath hath been duly made before me; and whereas the said A. B. having neglected and refused to appear, pursuant to the contents of the said summons, I thereupon afterwards issued my warrant, under my hand and seal, in order that the said A. B. by virtue thereof might be apprehended and brought before me, to answer the premises; and whereas the said A. B., in pursuance thereof, hath been apprehended and brought before me, now duly sitting by virtue of my office, and hath been duly required to give evidence and be examined before me and my inquest, on her Majesty's behalf, touching the death of the said R. F.; yet the said A. B. notwithstanding hath wilfully and absolutely refused, and still doth wilfully and absolutely refuse, to give evidence and be examined touching the premises, or to give sufficient reason for his refusal, in wilful and open violation and delay of justice: these are therefore, by virtue of my office, in her Majesty's name, to charge and command you, or one of you, the said constables, headboroughs, and others her Majesty's officers of the peace, in and for the said county of , forthwith to convey the body of the said A. B. to the gaol of , in the said county, and safely to deliver the same to the keeper of the said prison there; and these are likewise, by virtue of my said office, in her Majesty's name, to will and require you, the said keeper, to receive the body of the said A. B. into your custody, and him safely to keep in the prison until he shall consent to give his evidence and be examined before me and my inquest, on her Majesty's behalf, touching the death of the said R. F., or until he shall be from thence discharged by due course of law. And for your so doing this is your warrant. Given under my hand and seal this day of , A. D. .

A. C. Coroner. (L. S.)

To the constables, headboroughs, and others her Majesty's officers of the peace in and for the said county of , and also to the keeper of the prison at , in the said county.

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(7). Inquisition of murder.

*County of } AN inquisition indented, taken at , in the county of
——. } aforesaid, the day of , in the year of the reign of , before me, A. C., gentleman, one of the coroners of our Lady the Queen for the county aforesaid, upon the view of the body of A. D., then and there, and within the jurisdiction of the said coroner, lying dead, upon the oaths of A. B., C. D., E. F., &c., good and lawful men of aforesaid and of three other of the next towns, to wit, K., L., and M., in the said county, who being now here sworn and charged to inquire on the part of our said Lady the Queen when, where, how, and after what manner, the said A. D. came to his death, do say, upon their oath, that one A. M., late of aforesaid, gentleman*, on the day of , in the year of aforesaid, at the [first] hour in the night of the same day, with force and arms, at , in the county aforesaid, in and upon the aforesaid A. D., then and there being in the peace of God and of the said Lady the Queen, feloniously, voluntarily, and of his malice aforethought, made an assault†; and that the aforesaid A. M. then and there, with a certain sword made of iron and steel, of the value of 5s., which he the said A. M. then and there held in his right hand, the aforesaid A. D. in and upon the left part of the belly of the said A. D., a little above the navel of the said A. D., then and there violently, feloniously, voluntarily, and of his malice aforethought, struck and pierced, and gave to the said A. D. then and there with the sword aforesaid, in and upon the aforesaid left part of the belly of the said A. D., a little above the navel of the said A. D., one mortal wound of the breadth of half an inch, and of the depth of three inches, of which said mortal wound the aforesaid A. D. then and there instantly died; and so the said A. M. then and there feloniously killed and murdered the said A. D. against the peace of our said Lady the Queen, her crown and dignity. And moreover, &c.* [conclude from these words in the next form, *mutatis mutandis*].

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(8). The like, against accessaries.

[Proceed as in the above form to the conclusion of the words *crown and dignity*, and then thus]: *and the said jurors further say upon their oath afore-*

12. *Forms.*

said, that A. A. of , [yeoman], and B. A. of , [yeoman], were feloniously present with drawn swords at the time of the felony and murder aforesaid, in form aforesaid committed, that is to say, on the said day of , in the year aforesaid, at aforesaid, in the county aforesaid, at the [first] hour in the night of the same day, then and there comforting, abetting, and aiding the said A. M. to do and commit the felony and murder aforesaid in manner aforesaid, against the peace of our said Lady the Queen, her crown and dignity.

And moreover the jurors aforesaid, upon their oath aforesaid, do say, that the said A. M., [A. A., and B. A.] had not [nor any of them had] nor as yet [have or] hath any goods or chattels, lands or tenements within the county aforesaid or elsewhere, to the knowledge of the said jurors; [or "*and the jurors aforesaid upon their oath aforesaid do say, that the said A. B. at the time of the doing and committing of the felony and murder aforesaid, had goods and chattels contained in the inventory to this inquisition annexed, which remain in the custody of B. C.*"].

In witness whereof, as well the aforesaid coroner as the jurors aforesaid, have to this inquisition put their seals on the day and year, and at the place first above-mentioned.

A. B.
C. D.
A. C., Coroner. *E. F. &c. jurors.*

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(9). Inquisition where one hangs himself.

[As in the form (No. 7.) to the asterisk, and then thus]: *not having God before his eyes, but being seduced and moved by the instigation of the devil, at aforesaid, in a certain [wood] at aforesaid, standing and being, the said A. D. being then and there alone, with a certain hempen cord of the value of* [3d.] *which he then and there had and held in his hands, and one end thereof then and there put about his neck, and the other end thereof tied about a [bough] of a certain [oak tree], himself then and there with the [cord] aforesaid voluntarily and feloniously, and of his malice aforethought, hanged and suffocated: and so the jurors aforesaid upon their oath aforesaid say, that the said A. D. then and there in manner and form aforesaid as a felon, of himself feloniously, voluntarily, and of his malice aforethought himself killed, strangled, and murdered; against the peace of our said Lady the Queen, her crown and dignity.*

In witness, &c. [conclude as in (No. 8.) from these words].

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(10). Inquisition where one drowns himself.

AT aforesaid, in the county aforesaid, then and there being alone, in a common [river] there called , himself voluntarily and feloniously drowned; and so the jurors aforesaid upon their oath aforesaid say, that the aforesaid A. D. in manner and form aforesaid, then and there himself voluntarily and feloniously as a felon, of himself, killed and murdered; against the peace of our said Lady the Queen, her crown and dignity. In witness, &c. [as in form (No. 8)].

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(11). Inquisition on one drowned by accident.

THAT the said A. D. on the day of , in the year aforesaid, at the parish and in the county aforesaid, going into the river there to bathe himself, it so happened that accidentally, casually, and by misfortune he the said A. D. was in the water of the said river then and there suffocated and drowned, of which said suffocation and drowning he the said A. D. then and there instantly died; and so the jurors aforesaid do say, that the said A. D. in manner and by the means aforesaid accidentally, casually, and by misfortune came to his death, and not otherwise. In witness, &c. [as in form (No. 8)].

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(12). Inquisition where one dies a natural death.

THAT the said A. D. on the day of , in the year aforesaid, at the parish and in the county aforesaid, to wit, in a certain place called , was found dead; that he had no marks of violence appearing on his body, and died by the visitation of God in a natural way, and not otherwise. In witness, &c. [as in form (No. 8)].

12. *Forms.*

(13). Inquisition upon one who dies in a gaol.

THAT the aforesaid A. D. on the day of the taking of this inquisition, being a prisoner in the gaol at , in the county aforesaid, then and there died of the visitation of God, and then and there in manner and form aforesaid came to his death, and not otherwise. In witness, &c. [as in form (No. 8)].

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(14). Inquisition on one non compos mentis.

THAT the aforesaid A. D. on the day and year aforesaid, and at the time of his death, to wit, from the day of to the time of his death, and at the time of his death aforesaid, was a lunatic and a person of insane mind: and that the said A. D. being a lunatic and a person of insane mind as aforesaid, did on the day of come alone to a certain [river] called , in the said county, and did then and there cast himself into the said [river], and drowned himself in the water of the said [river]: and so the jurors aforesaid upon their oath aforesaid say, that the aforesaid A. D. from the cause aforesaid in manner and form aforesaid came to his death, and not otherwise. In witness, &c. [as in form (No. 8)].

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(15). Inquisition on one for cutting his throat.

[As in the form, *ante*, 49, No. 7, to the †, and then thus]: *and that the aforesaid A. D. then and there with a certain [knife] of the value of [one penny] which he the said A. D. then and there held in his [right] hand, himself upon his throat then and there feloniously, voluntarily, and of his malice aforethought did strike, and gave to himself then and there with the [knife] aforesaid upon his throat aforesaid, one mortal wound of the breadth of [four inches], and the depth of [one inch], of which said mortal wound the said A. D. at aforesaid, in the county aforesaid, languished and languishing lived from the said day of , in the year aforesaid, to the day of , and that the said A. D. on the day of aforesaid, in the year aforesaid, at aforesaid, in the county aforesaid, of that mortal wound died: and so the jurors aforesaid, &c.* [as in form (No. 9)].

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(16). For killing another in his own defence.

[As in the form, *ante* 49, No. 7, to the †, and then thus]: *and him the said A. K. did then and there endeavour to beat and kill by continuing the assault aforesaid, from the house of one W. H. in aforesaid, to a certain place called , in the county aforesaid, and the said A. K. seeing that the said A. D. was so maliciously disposed, to a certain wall in the said place called did flee, and from thence for fear of death could not escape, and so the said A. K. himself in preservation of his life against the said A. D. continued to defend, and in his own defence him the said A. K. upon the [right] part of the [breast] of him the said A. D. with a certain [sword] of the price of [one shilling], which the said A. K. then and there held in his [right] hand, did strike, and then and there giving to the said A. M. one mortal wound of the breadth of [one] inch and of the depth of [three] inches, of which said mortal wound the said A. D. at aforesaid, in the county aforesaid, languished, and languishing lived from the said day of , to the day of from thence next ensuing, and that the said A. D. on the said day of in the year aforesaid, at aforesaid in the said county, of that mortal wound died; and so the said A. K. did then and there kill him the said A. D. in his own defence.*

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(17). Inquisition where the murderer is unknown.

[The same as before, only say, *that a certain person unknown, &c.* and add]: *and the said jurors upon their oath aforesaid further say, that the said person unknown, after he had committed the said felony and murder in manner aforesaid, did flee away; against the peace of our said Lady the Queen, her crown and dignity. In witness, &c.* [as in form (No. 8)].

12. *Forms.*

(18). Coroner's inquisition on a body, the death being occasioned by a collision on a railway.

County of } AN inquisition indented taken for our sovereign Lady the Queen,
-, to wit. } at the within the said county, and within the jurisdiction of the coroner of the said county, on the day of , in the year of the reign of our sovereign Lady the now Queen Victoria, before ——— Esq. coroner of our said Lady the Queen for the said county, on view of the body of A. D. then and there, and within the jurisdiction of the coroner of the said county lying dead, upon the oath of (the jurors), *good and lawful men of the said county within the jurisdiction aforesaid, duly chosen, and who then and there upon the view of the body of the said A. D. so then and there being within the jurisdiction aforesaid duly sworn and charged to inquire for our said Lady the Queen, when, how, and by what means the said A. D. came to his death, do upon their oath say, that on the day of , in the year aforesaid, in the parish of , in the county of , a certain locomotive railway steam-engine on which the said A. D. then and there was, to wit, at the parish aforesaid, in the county aforesaid, to which said locomotive railway steam-engine then and there (to wit,) at the parish aforesaid, in the county aforesaid, was attached a certain carriage called a tender, and divers, to wit, ten railway carriages, was with the said tender and railway carriages then and there, to wit, at the parish aforesaid, in the county aforesaid, passing along a certain line of railway, called the . And the jurors aforesaid, upon their oath aforesaid, further say, that the said A. D. so then and there, to wit, on the day and year last aforesaid, at the parish aforesaid, in the county aforesaid, being upon the said locomotive railway steam-engine as aforesaid, and the said tender and carriages so being then and there, to wit, at the parish aforesaid, in the county aforesaid, attached as aforesaid, and the said locomotive railway steam-engine, with the said tender and carriages attached as aforesaid, then and there, to wit, on the day and year last aforesaid, at the parish aforesaid, in the county aforesaid, moving and passing along the said line of railway, it so happened that the said locomotive railway steam-engine upon which the said A. D., then and there, was as aforesaid, accidentally, casually and by misfortune, with great force and violence, then and there, ran against and struck a certain other railway carriage then and there, being in and upon the said railway, by means of which said running against and striking the said railway carriage last-mentioned, the said A D. was then and there, accidentally, casually and by misfortune, forced and thrown from out of and off the said locomotive railway steam-engine, upon and against the said tender so attached to the said locomotive railway steam-engine as aforesaid, and the said A. D. thereby then and there, by being so thrown and forced from out of and off the said locomotive railway steam-engine, upon and against the said tender as aforesaid then and there, to wit, at the parish aforesaid, in the county aforesaid, did receive divers mortal wounds, bruises, fractures, and contusions on the belly and other parts of the body of him the said A. D., of which said mortal wounds, bruises, fractures, and contusions the said A. D. then and there, to wit, on the day and year last aforesaid, at the parish aforesaid, in the county aforesaid died. And so the jurors aforesaid, upon their oath aforesaid, do say that the said A. D. in the manner and by the means aforesaid, and at the time and place last aforesaid, accidentally, casually and by misfortune came to his death, and not otherwise. And that the said locomotive railway steam-engine, in the manner and by the means aforesaid, was moving to the death of the said A. D., to wit, at the parish aforesaid, in the county aforesaid, and is of the value of £——— and is the property and in the possession of the Railway Company. In witness whereof as well, I the said coroner, as the jurors aforesaid, have hereunto severally set our hands and seals the day and year first above written.*

———, *Coroner.* (L. S.)

A B (L S.) *C. D.* (L. S.), *&c. &c.*

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(19) Recognisance of jurors upon an adjournment.

YOU acknowledge yourselves severally to owe to our sovereign Lady the Queen the sum of ten pounds, to be levied upon your goods and chattels, lands and tenements, for her Majesty's use, upon condition that if you, and each of you, do personally appear here again [or at an adjourned place] *on next, being the day of instant, at ten of the clock in the forenoon pre-*

12. *Forms.*

cisely, then and there to make further inquiry on behalf of our said sovereign Lady the Queen, touching the death of the said R. F. of whose body you have had the view: then this recognisance to be void, or else to remain in full force. Are you content?

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(20). Proclamation of adjournment.

ALL manner of persons who have any thing more to do at this court before the Queen's coroner for this county, may depart home at this time, and give their attendance here again [or at the adjourned place] *on next, being the day of instant, at ten of the clock in the forenoon precisely. God save the Queen.*

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(21). Proclamation at adjourned meeting.

ALL manner of persons who have any thing more to do at this court before the Queen's coroner for this county, on this inquest now to be taken, and adjourned over to this time and place, draw near and give your attendance; and you, gentlemen of the jury, who have been impannelled and sworn upon this inquest to inquire touching the death of R. F. severally answer to your names and save your recognisances.

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(22) Oath of officer to keep the jury until they are agreed in their verdict.

YOU shall well and truly keep the jury upon this inquiry, without meat, drink or fire; you shall not suffer any person to speak to them, nor you yourself, unless it be to ask them if they have agreed on their verdict, until they shall be agreed. So help you God.

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(23) Recognisance to prosecute, &c.

——, } *BE it remembered, that on the day of , in the*
to wit. } *year of the reign of our sovereign Lady the now Queen Victoria, A. B. of the parish of C. in the county of , [baker], C. G. of the same place, [victualler], E. F. of the same place, [labourer],* [and so insert the names of all bound over], *do severally acknowledge to owe to our sovereign Lady the Queen the sum of forty pounds of lawful money of Great Britain, to be levied on their several goods and chattels, lands and tenements, by way of recognisance to her Majesty's use, in case default shall be made in the conditions following:—*

The condition of this recognisance is such, that if the above-bounden do severally personally appear at the to be holden , in and for the county of , and the said A. B. shall then and there prefer or cause to be preferred to the grand jury a bill of indictment against G. H. late of the parish of , in the county of , [labourer], and now in custody for the wilful murder of R. F. late the wife of the said E. F., and that the said A. B., C. G., and E. F. do then and there severally personally appear to give evidence on such bill of indictment to the said grand jury; and in case the said bill of indictment shall be returned by the grand jury a true bill, that then they, the said A. B., C. G., and E. F. do several lypersonally appear at the next to be holden for the said county of , and the said A. B. shall then and there prosecute, or cause to be prosecuted, the said G. H. on such indictment; and the said A. B., C. G., and E. F. do then and there severally give evidence to the jury, that shall pass on the trial of the said G. H. touching the premises; and in case the said bill of indictment shall be returned by the grand jury not found, that then they do severally personally appear at the said to be then and there holden for the said county, and then and there prosecute and give evidence to the jury that shall pass on the trial of the said G. H. upon an inquisition taken before me, one of her Majesty's coroners for the said county of , on the view of the body of the said R. F. late the wife of the said E. F. and not depart the court without leave; then this recognisance to be void, otherwise to remain in full force.

Taken and acknowledged this day of, &c. before me,

A. C., Coroner

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(24) Recognisance to give evidence.

——, { *BE it remembered,* [as in the form (No. 23),] *J. P. of the parish of*
to wit. { *, in the county of , [blacksmith], T. P. of the same*

12. *Forms.*

place, [victualler], J. R. of the same place, [whitesmith], the husband of S.R.; J. B. of the same place, [haberdasher], the mainpernor of J. J. his apprentice, an infant, J. S. of the same place, [sword-cutler], the mainpernor of G. S. his son, an infant; do severally acknowledge to owe our sovereign Lady the now Queen the sum of forty pounds of lawful money of Great Britain, to be levied on their several goods and chattels, lands, and tenements, by way of recognisance, to her Majesty's use, in case default shall be made in the condition following; and Susan, the wife of J. P. of the same place, [labourer], on pain of imprisonment, in case she shall make default in such condition:—

The condition of this recognisance is such, that if the above-bounden J. P., T. P., S R. the wife of the said J. R., J. J., G. S., and S. P., do severally personally appear at the next to be holden at in and for the county of , and then and there give evidence on a bill of indictment to be preferred to the grand jury against C. D. now at large, for the wilful murder of Sarah his wife; and in case the said bill of indictment shall be returned by the grand jury a true bill, then that they do severally personally appear at the session of gaol delivery, to be holden for the said county of next after the apprehending or surrender of the said C. D., and then and there severally give evidence to the grand jury that shall pass on the trial of the said C. D. touching the premises; and in case the said bill of indictment shall be returned by the grand jury not found, that then they do severally personally appear at such sessions of gaol delivery to be then and there holden for the said county, and then and there give evidence to the jury that shall pass on the trial of the said C. D. upon an inquisition taken before me, one of her Majesty's coroners for the said county of , on view of the body of the said S. D., and not depart the court without leave, then this recognisance to be void, otherwise to be and remain in full force.

Taken and acknowledged this day of, &c. before me,

A. C., Coroner.

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(25). Warrant to bury after a view.

——, to wit. } WHEREAS an inquisition hath this day been held upon view of the body of R. F. who (not being of sound mind, memory and understanding, but lunatic and distracted, shot himself, and) now lies dead in your parish: these are, therefore, to certify that you may lawfully permit the body of the said R. F. to be buried; and for your so doing this is your warrant. Given under my hand and seal this day of, &c.

A. C., Coroner. (L. S.)

To the minister and churchwardens of the parish of , in the said city of , and to all others whom it may concern.

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(26). To bury a felo de se.

——, to wit. } WHEREAS by an inquisition taken before me one of her Majesty's coroners for the said county of , this day of , in the year of the reign of her present Majesty Queen Victoria, at the parish of , in the said county of , on view of the body of R. F. then and there lying dead, the jurors in the said inquisition named have found that the said R. F. feloniously, wilfully, and of his malice aforethought, did kill and murder himself: these are therefore, by virtue of my office, to will and require you forthwith to cause the body of the said R. F. to be buried privately in the churchyard or other burial ground of your parish, between the hours of nine and twelve at night, within after the receipt of this warrant; and for your so doing this is your warrant. Given under my hand and seal this day of, &c.

A. C., Coroner. (L. C.)

To the churchwardens and constables of the parish of , in the county of

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(27). To take up a body interred.

——, to wit. } WHEREAS complaint hath been made to me, one of her Majesty's coroners for the said county of , that on the day of the instant , the body of one R. F. was privately and secretly buried

12. *Forms.*

in your parish, in the said county, and that the said R. F. died not of a natural but violent death, and whereas no notice of the violent death of the said R. F. hath been given to either of her Majesty's coroners for the said county, whereby, on her Majesty's behalf, an inquisition might have been taken on view of the body of the said R. F. before his interment, as by law is required: these are, therefore, by virtue of my office, in her Majesty's name, to charge and command you that you forthwith cause the body of the said R. F. to be taken up and safely conveyed to in the said parish, that I with my inquest may have a view thereof, and proceed therein according to law. Hereof fail not, as you will answer the contrary at your peril. Given under my hand and seal the day of, &c. *A. C., Coroner.* (L. S.)

To the minister, churchwardens, and overseers of the parish of , in the said county of

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(28) Warrant of apprehension of a person accused by a coroner's inquisition.

To all Constables and Headboroughs of the parish of , in the county of , and to all others her Majesty's officers of the peace within the said county.

——, } *WHEREAS by an inquisition taken before me, one of her Majesty's*
to wit. } *coroners for the said county of , this day of , at the parish of , in the said county of , on view of the body of R. F. then and there lying dead, one late of the parish of , in the said county, stands charged with the wilful murder of the said R. F.: these are therefore by virtue of my office, in her Majesty's name, to charge and command you and every of you, that you or some one of you, without delay, do apprehend and bring before me the said coroner, or one of her Majesty's justices of the peace of the said county, the body of the said , of whom you shall have notice, that he may be dealt with according to law, and for your so doing this is your warrant. Given under my hand and seal this day of, &c.* *A. C., Coroner.* (L. S.)

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(29). Commitment thereon.

To the Constables, Headboroughs, and others her Majesty's officers of the peace for the county of , and also to the keeper of her Majesty's gaol of .

——, } *WHEREAS by an inquisition taken before me, one of her Majesty's*
to wit. } *coroners for the said county of , the day and year hereunder mentioned, on view of the body of R. F. lying dead at the parish of , in the said county of , late of the parish of , in the said county, [labourer], , stands charged with the wilful murder of the said R. F.: these are therefore by virtue of my office, in her Majesty's name, to charge and command you, or any of you, forthwith safely to convey the body of the said to her Majesty's gaol of , and safely to deliver the same to the keeper of the said gaol; and these are likewise, by virtue of my said office, in her Majesty's name, to will and require you the said keeper to receive the body of the said into your custody, and him safely to keep in the said gaol, until he shall be thence discharged by due course of law, and for your so doing this shall be your warrant. Given under my hand and seal the day of, &c.* *A. C., Coroner.* (L. S.)

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(30). *Certiorari* to return inquisition.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to A., coroner for our county of , greeting.

WE being willing, for certain reasons, that all and singular the inquisition, examinations, informations and depositions taken by or before you, touching the commitment of to the custody of the keeper of our gaol at , in and for our county of for murder, [or "*manslaughter*"], *as is said, be sent by you before our right trusty and well beloved Thomas Lord Denman, our Chief Justice, assigned to hold pleas before us, do command you that you send under your seal, before our said Chief Justice, in our Court before us at Westminster, immediately after the receipt of this our writ, all and singular the said inquisition, examinations, informations, and depositions, with all*

42. *Forms.*

things touching the same, as fully and perfectly as they have been taken by or before you, and now remain in your custody or power, together with this our writ, that we may cause further to be done thereon what of right and according to the law and custom of England we shall see fit to be done. Witness, &c.

By the Court.

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(31). Return thereto.

THE execution of this writ appears by the schedule hereunto annexed. The answer of A. C. one of the coroners of our Lady the Queen for the county of within named, with the seal affixed.

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(32). *Venire facias* to amend inquisition.

VICTORIA, by the grace, &c., [*ante* 55], *to the sheriff of greeting.*

WE command you that you do not forbear by reason of any liberty in your bailiwick, but that you cause to come before us on , wheresoever, &c., A. C. gentleman, one of the coroners of your county, to answer to us touching several defects in a certain inquisition lately taken before him, upon view of the body of one R. F. then lying dead. Witness, &c.

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(33). Inquisition of treasure-trove.

Town of Cambridge, to wit. } *AN inquisition indented, taken at the house commonly called or known by the name of the inn, situate in the town of Cambridge, in the county of Cambridge, the fourth day of January, in the year of the reign of our Sovereign Lady Victoria, by the grace of God, of the United kingdom of Great Britain and Ireland Queen, defender of the Faith, and in the year of our Lord, , before me, A. C. gentleman, one of the coroners of our Lady the Queen for the town aforesaid, upon the oaths of A. B., C. D., E. F., &c.* [naming the jurors], *good and lawful men of the town of Cambridge aforesaid, who, being sworn and charged to inquire on the part of our said Lady the Queen of and concerning certain treasure, lately said to be found within the said town, upon their oath say, that on the third day of June last, one hundred and ninety-five pieces of gold coin, in all weighing thirty-four ounces five penny-weights, and of the value of one hundred and thirty pounds and three shillings of lawful money of Great Britain; and three thousand five hundred and ten pieces of silver coin, in all weighing two hundred and eighty-nine ounces and fifteen penny-weights, and of the value of seventy pounds and five-pence halfpenny, of like lawful money, were found by W. S. and S. W., being labourers then in the employ of J. H. of the said town, bricklayer, hidden in the ground under the site of an ancient house or building, situate in street in the said town; and which said pieces of gold and silver coin were of ancient time hidden as aforesaid, and the owner whereof cannot now be known: and the jurors aforesaid, upon their oath aforesaid, do further say, that the said pieces of gold and silver coin were deposited, and now remain in the custody of T. M. of the said town, banker; which said pieces of gold and silver coin, I, the said coroner, have taken and seized into her Majesty's hands: in witness whereof, as well the aforesaid coroner as the said jurors have to this inquisition put their hands and seals on the day and year and at the place first above written.*

Schedule to the 6 & 7 Will. IV. c. 89, (*ante*, 34, 35).

Coroner's inquest at , upon the body of .

(A). Form of summons to a medical witness, as prescribed by the 6 & 7 Will. 4, c. 89, (*ante*, 34, 35).

BY virtue of this my order as coroner for , you are required to appear before me and the jury at , on the day of , 18 , at of the clock, to give evidence touching the cause of death of , [and then add, when the witness is required to make or assist at a post-mortem examination,] "*and make or assist in making a post-mortem examination of the body, with* [or "*without*"] *an analysis,* [as the case may be], *and report thereon at the said inquest.* (Signed) *Coroner.*

To , Surgeon [or "*M.D.*" as the case may be].

	£	s.
1. To every legally qualified medical practitioner for attending to give evidence under the provisions of this act at any coroner's inquest whereat no post-mortem examination has been made by such practitioner, the fee or remuneration shall be	1	1
2. For the making of a post-mortem examination of the body of the deceased, either with or without an analysis of the contents of the stomach or intestines, and for attending to give evidence thereon, the fee or remuneration shall be	2	2

12. *Forms.*

(D) Table of fees to a medical witness as prescribed by that act.

BY virtue of an act of parliament passed in session of , holden in the , intituled , I, the coroner of and for , do order you, the overseers of the parish [or "*township*" as the case may be], *to pay to the sum of* ["*one guinea,*" or "*two guineas,*" as the case may be], *being the fee* [or "*fees*"] *due to him for having attended as a medical witness at an inquest holden before me this day of , upon the body of , about the age of , who was found dead at ,* [or other particulars or description], *and at which said inquest the jury returned a verdict of .*

Witnessed by me , of . (Signed) *Coroner.*

To the overseers, &c.

(C). Coroner's order for the payment of medical witnesses, as prescribed by that act.

Corporations.

[5 & 6 Will. IV. c. 76; 6 & 7 Will. IV cc. 103, 104, 105; 7 Will. IV. & 1 Vict. cc. 19, 78, 81; 2 & 3 Vict. cc. 27, 28; 3 & 4 Vict. c. 28.]

Corporations.

IT is not intended that the present section should contain a treatise on the general law relating to Corporations—a subject too remote from the purposes of this work—but it is proposed merely, for the convenience of justices and other persons connected with cities and corporate towns, to notice the general Municipal Corporation Act, and the subsequent statutes which have been passed for altering or amending that act, and for regulating the local administration of justice in boroughs, and to add the cases which have been decided on the construction of these several acts, *in* explanation of their provisions.

Municipal corporations answerable for breaches of trust of old corporations.

[Municipal corporations, as altered by the Municipal Corporation Act, are but a continuance of the old corporations, and are, therefore, answerable for breaches of trust committed by the old corporations; and where the new corporation was made party to a suit, in respect of a breach of trust committed by their predecessors, it was held that they were not entitled to costs. (*Att.-Gen* v. *Ker*, 2 *Beav.* 420. *See Ludlow Corporation* v. *Tyler*, 7 *Car.* & *P.* 537: *Att.-Gen.* v. *Wilson*, 9 *Sim.* 30).

Indictment against

As to the mode of describing in an indictment property belonging to a corporation, and how far they are liable to be indicted, *see* "*Indictment,*" *Vol. III.*

Evidence of books &c. of.

As to the evidence by books of, and entries in, &c., *see* "*Evidence,*" *post,* "*Inspection,*" *Vol. III.*

Corporations.

Rating of.

As to the rating of, to the relief of the poor, *see* 4 & 5 *Vict. c.* 48, *Vol. IV., tit.* "*Poor.*"

Election &c. on Sunday.

Stat. 3 & 4 Will. IV. c. 31 enables the election of officers of corporations and other public officers required to be held on the Lord's Day to be held on the Saturday next preceding, or on the Monday next ensuing. (*See the enactment, tit.* "*Lord's Day,*" *Vol. III*).

The Municipal Corporation Act 5 & 6 Will. 4, c. 76

Preamble.

By the 5 & 6 Will. IV. c. 76, intituled, "An Act to provide for the Regulation of Municipal Corporations in England and Wales," (9th September, 1835), reciting "Whereas divers bodies corporate at sundry times have been constituted within the cities, towns, and boroughs of England and Wales, to the intent that the same might for ever be and remain well and quietly governed; and it is expedient that the charters by which the said bodies corporate are constituted should be altered in the manner hereinafter mentioned: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that so much of all laws, statutes, and usages, and so much of all royal and other charters, grants, and letters patent now in force relating to the several boroughs named in the schedules (A.) and (B.) to this act annexed, or to the inhabitants thereof, or to the several bodies or reputed bodies corporate named in the said schedules, or any of them, as are inconsistent with or contrary to the provisions of this act, shall be and the same are hereby repealed and annulled."

Repeal of all acts, charters, and customs inconsistent with this act.

Reservation of all rights of property and beneficial exemptions to freemen their wives and children (*a*).

2. "And whereas in divers cities, towns and boroughs, the common lands and public stock of such cities, towns and boroughs, and the rents and profits thereof, have been held and applied for the particular benefit of the citizens, freemen and burgesses of the said cities, towns and boroughs respectively, or of certain of them, or of the widows or kindred of them, or certain of them, and have not been applied to public purposes: be it therefore enacted, that every person who now is or hereafter may be an inhabitant of any borough, and also every person who has been admitted or who might hereafter have been admitted a freeman or burgess of any borough if this act had not been passed, or who now is or hereafter may be the wife or widow or son or daughter of any freeman or burgess, or who may have espoused or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been or may hereafter be bound an apprentice, shall have and enjoy and be entitled to acquire and enjoy the same share and benefit of the lands, tenements, and hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any borough or body corporate, and of any lands, tenements, and hereditaments, and any sum or sums of money, chattels, securities for money or other personal estate, of which any person or any body corporate may be seised or possessed in whole or in part for any charitable uses or trusts, as fully and effectually, and for such time and in such manner, as he or she by any statute, charter, bye-law or custom in force at the time of passing this act might or could have had, acquired, or enjoyed, in case this act had not been passed: provided always, that the total amount

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(*a*) Where, previous to the passing of this act, a bye-law directed that certain annual sums out of rents arising from the inclosure of corporate lands should be distributed yearly by the common attornies of the borough among the twelve senior burgesses, it was held, that, under this section, an action of debt was maintainable against the corporation at large by the parties to whom pecuniary benefits were granted by such bye-law. (*Hopkins* v. *The Mayor of Swansea*, 4 *Mee. & W.* 621: *S C. confirmed in error*, 8 *Mee. & W.* 901).

to be divided amongst the persons whose rights are herein reserved in this behalf shall not exceed the surplus which shall remain after payment of the interest of all lawful debts chargeable upon the real or personal estate out of which the sums so to be divided have arisen, together with the salaries of municipal officers, and all other lawful expenses which, on the 5th day of June, were defrayed out of or chargeable upon the same: provided also, that nothing hereinbefore contained shall be construed to apply to any claim, right, or title of any burgesses or freemen or of any person to any discharge or exemption from any tolls or dues levied wholly or in part by or to the use or benefit of any borough or body corporate; and that after the passing of this act no person shall have or be entitled to claim thenceforward any discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any body corporate, except as hereinafter is excepted: provided nevertheless, that every person who, on the 5th day of June in this present year, was an inhabitant, or was or was entitled to be admitted a freeman or burgess of any borough, or who on the said 5th day of June was the wife or widow, son or daughter of any freeman or burgess of any borough, or who on the said 5th day of June was bound an apprentice, shall be entitled to have or acquire and enjoy the same discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any borough or body corporate as fully and for such time and in such sort as he or she, by any statute, charter, bye-law or custom in force on the said 5th day of June, might or would have had, acquired, and enjoyed the same if this act had not been passed, and no further or otherwise: provided also, that where, by any statute, charter, bye-law or custom in force within any borough at the time of passing this act, any person whose rights in this behalf are herein reserved would have been liable in case this act had not been passed to pay any fine, fee, or sum of money to any body corporate, or to any member, officer, or servant of any body corporate, in consideration of his freedom, or of his or her title to such rights as are herein reserved, no such person shall be entitled to have or claim any share or benefit in respect of the rights herein reserved as aforesaid until he or she shall have paid the full amount of such fine, fee, or sum of money to the treasurer of such borough appointed under the provisions of this act, on account of the borough fund hereinafter mentioned: provided also, that nothing in this act contained shall be construed to entitle any person to any share or benefit of the rights herein reserved who shall not have first fulfilled every condition which, if this act had not passed, would have been a condition precedent to his or her being entitled to the benefit of such rights, so far as the same is capable of being fulfilled according to the provisions of this act, or to strengthen, confirm, or affect any claim, right, or title of any burgesses or freemen of any borough or body corporate, or of any person, to the benefit of any such rights as are hereinbefore reserved, but the same in every case may be brought in question, impeached, and set aside in like manner as if this act had not been passed."

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5 & 6 Will. 4, c. 76.

3. Provided always, "that from and after the passing of this act no person shall be elected, made or admitted a burgess or freeman of any borough by gift or purchase."

No freedom by gift.

4. "And whereas the right of voting in the election of members to serve in Parliament, was by an act passed in the second year of the reign of his present Majesty, intituled, 'An Act to amend the Representation of the People of England and Wales,' preserved to all persons who then were or thereafter might become freemen or burgesses of any city or borough, subject to the conditions and provisions in that act contained; be it therefore enacted, that every person who, if this act had not been passed, would have enjoyed, as a burgess or freeman, or might hereafter have acquired, in respect of birth or servitude, as a

2 Will. 4, c. 45.

Reservation of the parliamentary franchise to freemen.

Corporations.

5 & 6 Will. 4, c. 76.

burgess or freeman, the right of voting in the election of a member or members to serve in Parliament for any city or borough, shall be entitled to enjoy or acquire such right of voting as fully as if this act had not been passed; and the town clerk of every city or borough returning a member or members to Parliament shall at all times hereafter do and perform all things appertaining to the due registration of the freemen or burgesses of such city or borough according to the provisions of the said act."

Freemen's roll to be made out and kept by the town clerk (a).

5. "The town clerk of every borough shall, on or before the first day of December next, make out a list, to be called 'The Freemen's Roll' of all persons who at the time of the passing of this act shall have been admitted as burgesses or freemen of such borough; and that whenever any person shall hereafter become entitled to be admitted a burgess or freeman for the purposes aforesaid of such borough in respect of birth, servitude or marriage, and shall claim to be admitted accordingly, the mayor of such borough shall examine into such claim, and upon such claim being established, every such person shall thereupon be admitted and enrolled by the town clerk of such borough upon the freemen's roll; and the town clerk shall keep a true copy of such roll, to be perused by any person without payment of any fee at all reasonable times, and shall deliver a copy thereof to any person requiring the same, on payment of a reasonable price for such copy."

Corporations to be styled mayor, aldermen, and burgesses.

6. "After the first election of councillors under this act in any borough, the body or reputed body corporate named in the said schedules, in connexion with such borough, shall take and bear the name of the mayor, aldermen and burgesses of such borough, and by that name shall have perpetual succession, and shall be capable in law, by the council hereinafter mentioned of such borough, to do and suffer all acts which now lawfully they and their successors respectively may do and suffer by any name or title of incorporation; and the mayor of each of the said boroughs shall be capable in law to do and suffer all acts which the chief officer of such borough may now lawfully do and suffer, so far as the same respectively are not altered or annulled by the provisions of this act."

Boundaries of certain boroughs to be those settled by 2 & 3 Will. 4, c. 64.

7. "After the passing of this act the metes and bounds of the several boroughs named in the first section of the said schedules (A.) and (B.) for the purposes of this act shall be the same as the limits thereof respectively settled and described in an act passed in the second and third year of the reign of his present Majesty, intituled 'An Act to settle and describe the Divisions of Counties and the Limits of Cities and Boroughs in England and Wales, so far as respects the Election of Members to serve in Parliament;' and the metes and bounds of the several boroughs named in the second section of the schedules for the purposes of this act shall be and remain as the same are now taken to be, until such time as Parliament shall otherwise direct: provided nevertheless, that notwithstanding anything herein contained, no parish or place, or part of any parish or place, which is detached from the main part of such borough or county of a city or town corporate, shall, after the passing of this act, be included within any such borough or county; and, subject to this provision, the metes and bounds of every such borough and county shall include the whole of the liberties of such borough or county by land and by water as the same now are or are taken to be."

Boundaries of other boroughs to remain until altered by Parliament (b).

Every place in-

8. "Every place and precinct which shall be included within the

(a) The duties of town clerks as to making lists of those burgesses or freemen who are entitled to vote for members of Parliament are specified in 2 Will. IV. c. 45, s. 46, &c. (*See "Parliament," Vol. V.*).

(b) See the 6 & 7 Will. IV. c. 103, s 1, *post*, p. 135, making a temporary provision for the boundaries of certain boroughs.

metes and bounds of any borough as hereinbefore provided, and none other, shall be part of such borough, and in those boroughs which are counties of themselves shall be part of such county and of none other; and in every case in which the metes and bounds of any borough or county under the provisions of this act shall not include any place or precinct, which, before the passing of this act, was part of such borough or county, such place or precinct shall thenceforward be taken to be part of the county wherein such place or precinct is situated, or with which it has the longest common boundary: provided nevertheless, that if any such place or precinct shall have been liable before the passing of this act to contribute to any rate made for the purpose of satisfying any lawful debt to which the rate-payers of such borough or county were liable to contribute before the passing of this act, and in case any difference shall arise concerning the proportion of such debt as ought therefore to be paid and contributed in respect of such place or precinct, it shall be lawful for the senior justice of assize for the county of which such place or precinct shall thenceforward be taken to be part, on his circuit, on the application of the council of such borough, or of the chairman of a public meeting of the rate-payers of such place or precinct, to appoint, by writing under his hand, a barrister not having any interest in the question, to arbitrate between the parties, and by his award under his hand and seal to assess the proportion, if any, of such debt as ought therefore to be paid and contributed in respect of such place or precinct; and such arbitrator shall also assess the costs of the arbitration, and shall direct by whom and in what proportion and out of what fund the same shall be paid, and such rate as aforesaid shall continue to be levied by warrant of the council of such borough, and paid by such place or precinct, as if this act had not passed, until such proportion shall have been fully paid and satisfied to the treasurer of the borough, and no longer: provided nevertheless, that every county gaol, house of correction or lunatic asylum, court of justice or judge's lodging, which at the time of the passing of this act is taken to be for any purpose within any county, shall still, for all such purposes, be taken to be within such county; any thing herein contained to the contrary notwithstanding."

Included within the bounds of a borough to be part of such borough. Parts cut off from the borough to be declared part of adjoining county.

9. "Every male person of full age who on the last day of August in any year shall have occupied any house, warehouse, counting-house or shop within any borough during that year and the whole of each of the two preceding years, and also during the time of such occupation shall have been an inhabitant householder within the said borough, or within seven miles of the said borough, shall, if duly enrolled in that year according to the provisions hereinafter contained, be a burgess of such borough and member of the body corporate of the mayor, aldermen and burgesses of such borough: provided always, that no such person shall be so enrolled in any year, unless he shall have been rated in respect of such premises so occupied by him within the borough to all rates made for the relief of the poor of the parish wherein such premises are

Occupiers of houses and shops rated for three years to the relief of the poor, entitled to be burgesses, if resident householders within seven miles (*a*).

(*a*) See 7 Will. IV. & 1 Vict. c. 78, ss. 8, 9, *post*, p. 125. A person rated for the whole of a house, which he occupies with the exception of one room underlet by the week, has a sufficient occupation to entitle him to be on the burgess roll under this section. So, also, where one house adjoined another, both being under the same roof, and having a common entrance passage into which the outer door of each opened, and a common staircase leading to the bed-rooms, each house is distinct, and may be the subject of a sufficient occupation to qualify a party to be on the roll.

But where a person let a cellar under the house for which he was rated to a person who occupied it as a warehouse, and was rated for it, there being an internal communication between the house and cellar, the occupier of the house is not qualified to be on the burgess roll. But the occupier of a house, who had assigned all his stock in trade and book debts to a creditor, is nevertheless qualified to be on the burgess

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5 & 6 Will. 4, c. 76.

On payment of rates (*a*).

Aliens and persons who have received parochial relief or other alms not to be enrolled (*b*).

Medical assistance or instruction in endowed schools not to be a cause of disqualification.

Occupiers may claim to be rated.

situated during the time of his occupation as aforesaid, and unless he shall have paid on or before the last day of August as aforesaid all such rates, including therein all borough rates, if any, directed to be paid under the provisions of this act, as shall have become payable by him in respect of the said premises, except such as shall become payable within six calendar months next before the said last day of August: provided also, that the premises in respect of the occupation of which any person shall have been so rated need not be the same premises or in the same parish, but may be different premises in the same parish or in different parishes: provided also, that no person being an alien shall be so enrolled in any year, and that no person shall be so enrolled in any year who within twelve calendar months next before the said last day of August shall have received parochial relief or other alms, or any pension or charitable allowance from any fund intrusted to the charitable trustees of such borough hereinafter mentioned: provided that in every case provided in this act the distance of seven miles shall be computed by the nearest public road or way by land or water."

10. "No medical or surgical assistance given by the charitable trustees of any borough shall be taken to be such charitable allowance as shall disqualify any person from being enrolled a burgess as aforesaid, nor shall any person be so disqualified by reason that any child of such person shall have been admitted and taught within any public or endowed school."

11. "In every borough it shall be lawful for any person occupying any house, warehouse, counting-house or shop to claim to be rated to the relief of the poor in respect of such premises, whether the landlord shall or shall not be liable to be rated to the relief of the poor in respect thereof; and upon such occupier so claiming and actually paying or tendering the full amount of the last made rate then payable in respect of such premises, the overseers of the parish in which such premises are situate are hereby required to put the name of such occupier

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roll. (*Reg.* v. *Eye, Mayor of*, 2 *Per. & D.* 348; 9 *Ad. & E.* 670).

(*a*) The payment of rates required by this section, in order to qualify a person to be enrolled as a burgess, must be a *bonâ fide* payment by such person himself; and a payment by and at the expense of a third party, though by the authority and with the knowledge of such person, is not sufficient. (*Reg.* v. *Bridgnorth, Mayor of*, 2 *Per. & D.* 317; 10 *Ad. & El.* 66). By a local act for paving and lighting the streets &c., all houses &c., situated in the city and county of the city of Lichfield and within half a mile from any public street in the city, were to be deemed in the city. The bounds of the borough extended beyond these limits, and persons occupying beyond this distance were placed on the burgess roll. The town council had not extended the provisions of the local act to other parts of the borough as empowered by sect. 87, and they proceeded to make and levy certain rates under the local act, in which a person claiming to be put on the burgess roll was duly rated for three years, but had refused to pay. The court held, that these were not rates, the non-payment of which disqualified the party from having his name retained on the burgess roll, not being poor-rates, or borough rates levied under sect. 92. (*Reg.* v. *Lichfield, Mayor of*, 11 *L. J. R.*, (*N. S.*), *Q. B.* 122).

(*b*) In the city of Lichfield there was a certain charitable institution, arising from estates granted for charitable purposes, the annual income of which was disposed of "to poor housekeepers of the city not receiving parochial relief from any parish in the city:"—Held, that receipt of relief from this charity did not disqualify a party from having his name retained on the burgess list, on the ground that he had received "parochial relief or other alms from a fund intrusted to the charitable trustees of the borough," and that the words "other alms" in this section must be read as if they were "other parochial alms." (*Reg.* v. *Lichfield, Mayor of*, 11 *L. J. R.*, (*N. S.*), *Q. B.* 122. (*See Lewis* v. *Hammond*, 2 *B. & Ald.* 206; *and Reg.* v. *The Inhabitants of Halesworth*, 3 *B. & Ad.* 724).

upon the rate for the time being; and in case such overseer shall neglect or refuse so to do, such occupier shall nevertheless, for the purposes of this act, be deemed to have been rated to the relief of the poor in respect of such premises, from the period at which the rate shall have been made in respect of which he shall have so claimed to be rated as aforesaid: provided always, that where by virtue of any act of Parliament the landlord shall be liable to the payment of the rate for the relief of the poor in respect of any premises occupied by his tenant, nothing herein contained shall be deemed to vary or discharge the liability of such landlord, but in case the tenant who shall have been rated for such premises in consequence of any such claim as aforesaid shall make default in the payment of the poor's rate payable in respect thereof, such landlord shall be and remain liable for the payment thereof in the same manner as if he alone had been rated in respect of the premises so occupied by his tenant."

In case of titles by descent, &c. how the occupation is to be reckoned.

12. "Where any house, warehouse, counting-house or shop in any borough shall come to any person by descent, marriage, marriage settlement, devise or promotion to any benefice or office, such person shall be entitled to reckon the occupancy and rating, in respect of the occupancy thereof by the person from or by whom such house, warehouse, counting-house or shop shall have so come to him, as his own occupancy and rating conjointly with the time during which he shall have since occupied and been rated for the same, and shall be entitled to be enrolled a burgess in respect of such successive occupancy and rating, provided he shall be otherwise qualified as herein provided."

No new burgesses to be admitted who are not qualified under the act.

13. "After the passing of this act no person shall be enrolled a burgess of any borough for the purpose of enjoying the rights conferred for the first time by this act, in respect of any title other than by occupancy and payment of rates within such borough, according to the meaning and provisions of this act."

Exclusive rights of trading abolished.

14. "And whereas in divers cities, towns and boroughs a certain custom hath prevailed, and certain bye-laws have been made, that no person, not being free of a city, town or borough, or of certain guilds, mysteries or trading companies within the same, or some or one of them, shall keep any shop or place for putting to show or sale any or certain wares or merchandize by way of retail or otherwise, or use any or certain trades, occupations, mysteries or handicrafts for hire, gain or sale within the same: be it enacted, that, notwithstanding any such custom or bye-law, every person in any borough may keep any shop for the sale of all lawful wares and merchandizes by wholesale or retail, and use every lawful trade, occupation, mystery and handicraft, for hire, gain, sale or otherwise, within any borough."

Overseers to make lists of all persons entitled to be burgesses in their respective parishes (*a*).

15. "On the 5th day of September in every year, the overseers of the poor of every parish wholly or in part within any borough, shall make out an alphabetical list, to be called 'The Burgess List,' according to the form No. 1, in the schedule (D.) to this act annexed, of all persons who shall be entitled to be enrolled in the burgess roll of that year,

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(*a*) Where the overseers of several parishes in a borough omitted to make out the burgess list required by this section, so that at the Revision Court of the mayor there was no list in which the name of a claimant for that parish could be inserted: — Held, that this intermediate defect in his title to be on the general burgess roll, which is made up of the several parish lists, did not preclude the court from issuing a *mandamus* for the insertion of his name under 1 Vict. c. 78, s. 24, *post*. (*Reg.* v. *Lichfield, Mayor of*, 1 *Gale & D.* 28).

The mere omission, whether wilful or not, to sign the burgess list required to be made out under this section, subjects an overseer to the penalty under sect. 48; and where a declaration in debt against an overseer for such a penalty, stated that it was the duty of the defendant, and of the other overseers of the parish, to make out and sign the burgess list; that the defend-

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5 & 6 Will. 4, c. 76.

according to the provisions of this act, in respect of property within such parish; and the overseers shall sign such burgess lists, and shall deliver the same to the town clerk of the borough on the said 5th day of September in every year, and shall keep a true copy of such lists, to be perused by any person, without payment of any fee, at all reasonable hours between the 5th and 15th days of September in every year; and the town clerk shall forthwith cause copies to be printed of all overseers' lists delivered to him, and shall deliver a copy of all such lists to any person requiring the same, on payment of a reasonable price for each copy; and shall cause a copy of all such lists to be fixed on or near the outer door of the Town Hall, or in some public and conspicuous situation within the borough, on every day during the week next preceding the 15th day of September in every year."

As to boroughs in which there is no town clerk.

16. Provided always, "that in any borough in which there shall be no town clerk, or in which the town clerk shall be dead or incapable of acting, all matters by this act required to be done by and with regard to the town clerk, shall be done by and with regard to the person executing duties in such borough similar to those of town clerk, and if there be no such person, or if such person shall be dead or incapable of acting, then by and with regard to such fit person as the mayor of such borough shall appoint in that behalf: provided always, that every precinct or place, whether extra-parochial or otherwise, which shall have no overseers, shall, for the purpose of making out such lists as aforesaid, be deemed within the parish adjoining thereto, such parish being wholly or in part situate within the same borough as such precinct or place; and if such precinct or place shall adjoin two or more parishes so situate as aforesaid, it shall be deemed to be within the least populous of such parishes, according to the last census for the time being; and the over-

As to precincts, &c where there are no overseers.

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ant, as such overseer, ought to have signed, but that the defendant did not make out and sign such list. Plea, not guilty "by statute." On motion in arrest of judgment, on the ground that signature by the majority of overseers would be sufficient, as being virtually the signature of all, and ought therefore to have been negatived by the declaration:—Held, that the defect, if any, was cured by the verdict, because, if the signature of the majority would have been the signature of all, it had been negatived by the verdict, which found that the defendant had not signed. The signature of the overseer should be at the bottom of the list.

Semble, per Patteson, J., that all the overseers must sign the burgess list; and that where the parish consists of several divisions, and has an overseer acting separately for each division, the statute is not satisfied by each overseer signing a separate list for his own division only, but there should be one list for the whole parish. Before the commencement of such an action, no previous notice of action under s. 133 need be given by the plaintiff. (*King* v. *Burrell*, 4 *Per. & D.* 207; 12 *A. & E.* 460).

The provisions of the 5 & 6 Will. 4, c. 76, as to the machinery for the formation and revision of the burgess lists, being applicable only to then existing corporations, and to the particular period at which that act took effect, need not be precisely followed in the case of new corporations, created by charter under the powers conferred on the crown by the 1 Vict. c 78, s. 49 (*post*), but may be followed *cy-près*. Therefore, the appointment in such charter of individuals named therein, to make out and revise the lists, and to act as returning officer at the first election under such charter, is good; so also, days for holding the first elections, though not agreeing with those named for the elections in the 5 & 6 Will. 4, c. 76, may be appointed by such charter.

Nor is such charter void, because it directs the person appointed to make out the first list, to include in it only "all inhabitant householders within the borough, who shall possess the qualifications required by the 5 & 6 Will. 4, c. 76, instead of including also all persons occupying shops, &c., within the borough, and being inhabitant householders residing within seven miles thereof, according to the schedule to that act. (*Rutter* v. *Chapman*, 8 *Mee. & W.* 1.)

seers of the poor of every such parish shall insert in the list for their parish the names of all persons who would have been entitled to be inserted in the lists for such precinct or place, if such precinct or place had had overseers or been rated to the maintenance of the poor."

Persons omitted from overseers' lists to give notice to town clerk.

17. "Every person whose name shall have been omitted in any such burgess list, and who shall claim to have his name inserted therein, shall, on or before the 15th day of September in every year, give notice thereof to the town clerk in writing, according to the form No. 2. in the said schedule (D.), or to the like effect; and every person whose name shall have been inserted in any burgess list for any borough may object to any person as not being entitled to have his name retained in the burgess list for the same borough, and every person so objecting shall, on or before the 15th day of September in every year, give to the town clerk of such borough, and also give to the person objected to, or leave at the premises for which he shall appear to be rated in the burgess list, notice thereof in writing according to the form No. 3. in the said schedule (D.), or to the like effect; and every town clerk shall include the names of all persons so claiming to be inserted on the burgess list in a list according to the form No. 8. in the said schedule (D.), and shall include the names of all persons so objected to as not entitled to be retained on the burgess list in a list according to the form No. 5. in the said schedule (D.), and shall cause copies of such several lists to be fixed on or near the outer door of the Town Hall, or in some public and conspicuous situation within such borough during the eight days next preceding the 1st day of October in every year; and the town clerk shall likewise keep a copy of the names of all persons so claiming as aforesaid, and also a copy of the names of all persons so objected to as aforesaid, to be perused by any person, without payment of any fee, at all reasonable hours during the eight days, Sunday excepted, next preceding the 1st day of October in every year, and shall deliver a copy of each of such lists to any person requiring the same, on payment of a sum not exceeding one shilling for each copy."

Notices as to persons not entitled to be retained in lists (*a*).

Lists of claimants, and of persons objected to, to be published, &c.

Mayors and assessors to revise lists, and, upon due proof, to insert and expunge names (*b*).

18. "The mayor and the two assessors hereinafter mentioned, to be chosen in every year by the burgesses of every borough, shall hold an open court within such borough, for the purpose of revising the said burgess lists at some time between the 1st day of October inclusive and the 15th day of October inclusive, in the year 1836, and every succeeding year, having first given three clear days' notice of the holding of such court, to be fixed on or near the outer door of the Town Hall, or in some public and conspicuous situation within the borough; and the town clerk of every such borough shall, at the opening of the court, produce the said lists, and a copy of the lists of the persons claiming and of the persons objected to, so made out as aforesaid; and the overseers, vestry clerks, and collectors of poor's rates of every parish wholly or in part within every such borough shall attend the court, and shall answer

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(*a*) It has been made a question whether the following subscription to a notice of objection,—"Edward Alexander, King's Quay Street,"— contains a sufficient description within this section, of the objector's place of abode and the property for which he is rated. (*Reg.* v. *Eye, Mayor of*, 2 *Per. & D.* 348; 9 *Ad. & Ell.* 67). The objection should state the place of abode of the objector, and the property for which he is said to be rated on the burgess list. (*Reg.* v. *Norwich, Mayor of*, 2 *Jur.* 1086)

(*b*) Where a party, whose name has been expunged from the burgess roll of a borough by the mayor on revision, applies to the court under stat 7 Will. IV. & 1 Vict. c. 78, s. 24, (*post*, 128), for a mandamus to replace it, the court is bound to inquire into his title It is not, therefore, sufficient for him to show that his name was inserted by the overseers, and was expunged by the mayor, on an objection which, for want of legal notice under s. 17, (as the party alleges), ought not to have been heard. (*Reg.* v. *Harwich, Mayor of*, 8 *Ad & E.* 919)

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upon oath all such questions as the court may put to them or any of them touching any matter necessary for revising the burgess lists; and the mayor shall insert in such lists the name of every person who shall be proved, to the satisfaction of the court, to be entitled to be inserted therein, according to the provisions of this act, and shall retain on the said list the names of all persons to whom no objection shall have been duly made, and shall also retain on the said lists the name of every person who shall have been objected to by any person, unless the party so objecting shall appear by himself or by some one on his behalf in support of such objection; and where the name of any person inserted in any one of the said lists shall have been duly objected to, and the person objecting shall appear by himself, or by some one on his behalf, in support of such objection, the court shall require proof of the qualification of the person so objected to; and in case the qualification of such person shall not be proved to the satisfaction of the court, the mayor shall expunge the name of every such person from the said lists, and he shall also expunge from the said lists the name of every person who shall be proved to the court to be dead, and shall correct any mistake or supply any omission which shall be proved to the court to have been made in any of the said lists in respect of the name or place of abode of any person who shall be included in any such list, or in respect of the local description of his property: provided always, that no person's name shall be inserted by the mayor in any such list, or shall be expunged therefrom, except in the case of death, unless notice shall have been given as is hereinbefore required in each of the said cases."

Power to mayor, &c of adjourning, of administering oaths, &c.

19. "Every mayor holding any court under this act for the revision of the said lists shall have power to adjourn the same from time to time, so that no such adjourned court shall be held after the 15th day of October in any year, and shall have power to require any overseer, or person having the custody of any book containing any rate made for the relief of the poor during that or any preceding year, in any parish wholly or in part within the borough, to produce the same and allow the same to be inspected at any court to be held for revision of the burgess lists, and shall have power to administer an oath to the town clerk and to the overseers, and to all persons claiming to be inserted in or making objection to the omission or insertion of any name in any of the said lists, and to all persons objected to in any of such lists, and to all persons claiming to have any mistake in any of such lists corrected, and to all witnesses who may be tendered or examined on either side; and the mayor and assessors shall, upon the hearing in open court, determine upon the validity of such claims and objections, and the mayor shall, in open court, write his initials against the names respectively struck out or inserted, and against any part of the said lists in which any mistakes shall have been corrected, and shall sign his name to every page of the several lists so settled."

Mayor shall sign the lists in open court.

Barristers to be appointed to revise lists in the first year (*a*).

20. "The senior judge, or in case of his absence from the kingdom the next judge, in the commission of assize for the summer circuit in this year for every county, shall, before the last day of September in this year, appoint so many barristers as the said judge shall deem necessary to revise the lists of burgesses of every borough in or adjoining to such county; and the town and county of the town of Kingston-upon-Hull shall for this purpose be considered as next adjoining to the county of York, and the town of Berwick-upon-Tweed and town and county of the town of Newcastle-upon-Tyne as next adjoining to the county of Northumberland, and the city and county of the city of Bristol as next adjoining to the county of Somerset; and the said judge shall have power to appoint one or more barristers to revise the lists for the same borough, and the same barrister to revise the lists of more than one

(*a*) See 6 & 7 Will. IV. c. 103, s. 3, *post*, 136.

borough; and the barrister so appointed to any borough shall for that purpose, during this year, be in the place and stead of the mayor and assessors of such borough, and shall revise the list of burgesses in this year in the manner hereinbefore enacted concerning the mayor and assessors in every succeeding year; and if it shall be made to appear to the said judge that for any cause such lists cannot be revised within the period directed by this act, it shall be lawful for such judge and he is hereby required to appoint one or more barristers to act in the place of or in addition to those originally appointed; and every such barrister so subsequently appointed shall have the same power as if originally appointed; and every barrister appointed to revise any lists under this act shall be paid at the rate of five guineas for every day that he shall be so employed over and above his travelling and other expenses; and every such barrister, after the termination of his last sitting, shall lay or cause to be laid before the lords commissioners of his Majesty's treasury for the time being a statement of the number of days during which he shall have been so employed in each borough, and an account of the travelling and other expenses incurred by him in respect of such employment; and the said lords commissioners shall make an order for the amount to be paid to such barrister out of the consolidated fund: provided nevertheless, that as soon as a council shall be chosen in any borough under the provisions of this act the said lords commissioners shall make an order on the council of such borough for the amount of daily salary hereinbefore enacted to be paid to such barrister during the time that he shall have been employed in revising the lists of such borough; and the council of such borough shall forthwith cause the same to be repaid to the said lords commissioners out of the borough fund of such borough; and the same, if not paid, shall be deemed to be a debt due to his Majesty, and recoverable as such."

Affirmation may be substituted for oath.

21. "Every person authorized by law to make an affirmation instead of taking an oath shall make such affirmation in every case in which by this act an oath is required to be taken; and if any person taking any oath required by this act, or making any affirmation instead of taking such oath, shall wilfully swear or affirm falsely, such person shall be deemed guilty of perjury, and shall be punished accordingly."

Revised borough lists to be kept by the town clerk, and copied into books, with the names numbered.

22. "The burgess lists so revised and signed as last aforesaid, shall be delivered by the mayor tot he town clerk of such borough, who shall keep the same, and shall cause the said burgess lists to be fairly and truly copied into one general alphabetical list in a book to be by him provided for that purpose, with every name therein numbered, beginning the numbers from the first name, and continuing them in a regular series to the last name, and shall cause such books to be completed on or before the 22nd day of October in every year, and shall deliver such books, together with the lists, at the expiration of his office, to the person succeeding him in such office; and every such book in which the said burgess lists shall have been copied shall be the burgess roll of the burgesses of such borough entitled to vote, after the passing of this act, in the choice of the councillors, assessors, and auditors of such borough, as hereinafter mentioned, at any election which may take place in such borough between the 1st day of November inclusive in the year wherein such burgess roll shall have been made and the 1st day of November in the succeeding year; provided that no stamp duty shall be payable in respect of the admission, registry, or enrolment of any burgess, according to the provisions of this act."

Such book to be the roll of burgesses entitled to vote.

No stamp duty on enrolment (*a*).

23. "The town clerk of every borough shall cause to be written or

Copies of the bur-

(*a*) By stat. 1 & 2 Vict. c. 35, (4th July, 1838), "no stamp duty shall be chargeable on the admission of any person entitled to take up his freedom by birth or servitude in any city or borough in England returning a member or members to serve in Parliament."

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5 & 6 Will 4, c. 76.

gess roll to be printed for sale (a).

printed copies of the burgess roll in every year, and shall deliver such copies to all persons applying for the same, on payment of a reasonable price for each copy; and the monies arising from the sale thereof, and of the overseers' lists, and of the lists of claims and objections as aforesaid, shall be paid over to the treasurer of such borough, and shall be applied by him in aid of the borough fund hereinafter mentioned."

Expenses of overseers, how to be defrayed.

24. "The said council of every borough shall take an account of the reasonable expenses incurred by the overseers of the poor in carrying into effect the several provisions of this act so far as relates to the said lists, and shall order the treasurer of the said borough to pay the same out of the borough fund of the said borough."

Mayor, aldermen, and councillors to be chosen in every borough, who together shall constitute the council of the borough.

25. "In every borough shall be elected, at the time and in the manner hereinafter mentioned, one fit person, who shall be and be called 'The Mayor' of such borough; and a certain number of fit persons, who shall be and be called 'Aldermen' of such borough; and a certain number of other fit persons, who shall be and be called 'The Councillors' of such borough; and such mayor, aldermen, and councillors for the time being shall be and be called 'The Council' of such borough; and the number of persons so to be elected councillors of such borough shall be the number of persons in that behalf mentioned in conjunction with the name of such borough in the schedules (A.) and (B.) to this act annexed; and the number of persons so to be elected aldermen shall be one-third of the number of persons so to be elected councillors; and on the 9th day of November in this present year the councillors first to be elected under the provisions of this act, and on the 9th day of November, in the year 1838, and in every third succeeding year, the council for the time being of every borough, shall elect from the councillors, or from the persons qualified to be councillors, the aldermen of such borough, or so many as shall be needed to supply the places of those who shall then go out of office, according to the provisions hereinafter contained; and that upon the 9th day of November, in the year 1838, and in every third succeeding year, one-half of the number appointed as aforesaid to be the whole number of the aldermen of every borough shall go out of office, and the councillors immediately after the first election of aldermen shall appoint who shall be the aldermen who shall go out of office in the year 1838, and thereafter those who shall go out of office shall always be those who have been aldermen for the longest time without re-election: provided always, that any alderman so going out of office may be forthwith re-elected, if then qualified, as herein provided; provided also, that the aldermen so going out of office shall not be entitled to vote in the election of a new alderman."

Mayor and aldermen to continue to be members of the council during their offices.

26. "The mayor and aldermen shall, during their respective offices, continue to be members of the council of the borough, notwithstanding anything hereinafter contained as to councillors going out of office at the end of three years."

Future vacancies in the office of aldermen, how to be filled up.

27. "Whenever any extraordinary vacancy shall take place in the office of alderman of any borough, the council of such borough shall, within ten days after such vacancy shall occur, on a day to be fixed by the mayor for such purpose, elect some other fit person to fill such vacancy, either from the councillors or from the persons qualified to be councillors; and in case any councillor shall be elected to fill the office of alderman, then the vacancy which will thereby be occasioned in the council shall be filled up at the time and in the manner hereinafter directed; and every person so elected an alderman to fill an extraordinary vacancy shall hold such office until the time when the person in the room of whom he was chosen would regularly have gone out of

(a) See further provisions as to the burgess roll, 7 Will. IV. & 1 Vict. c. 78, ss. 5, 6, 7, *post*, 124.

office; and he shall then go out of office, but may be re-elected if then qualified as herein provided."

Who are not qualified to be chosen mayor or councillor (*a*).

28. "No person being in holy orders or being the regular minister of any dissenting congregation, shall be qualified to be elected or to be a councillor of any such borough, or an alderman of any such borough, nor shall any person be qualified to be elected or to be a councillor or an alderman of any such borough who shall not be entitled to be on the burgess list of such borough, nor unless he shall be seised or possessed of real or personal estate or both to the following amount, that is to say, in all boroughs directed by this act to be divided into four or more wards to the amount of one thousand pounds, or be rated to the relief of the poor of such borough upon the annual value of not less than thirty pounds, and in all boroughs directed to be divided into less than four wards, or which shall not be divided into wards, to the amount of five hundred pounds, or be rated to the relief of the poor in such borough upon the annual value of not less than fifteen pounds, or during such time as he shall hold any office or place of profit, other than that of mayor, in the gift or disposal of the council of such borough, or during such time as he shall have directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of such council (*b*): provided that no person shall be disqualified from being a councillor or alderman of any borough as aforesaid by reason of his being a proprietor or shareholder of any company which shall contract with the council of such borough for lighting or supplying with water or insuring against fire any part of such borough."

Who shall vote in the election for councillors.

29. "Every burgess of any borough who shall be enrolled on the burgess roll for the time being of such borough shall be entitled to vote in the election of councillors and of the auditors and assessors hereinafter mentioned for such borough, and no person who shall not be enrolled in such burgess roll for the time being shall have any voice or be entitled to vote in any such election."

Councillors to be chosen on 1st Nov. in every year.

30. "Upon the 1st day of November in every year the burgesses so enrolled in every borough shall openly assemble and elect from the persons qualified to be councillors the councillors of such borough, or such part of them as shall be needed to supply the places of those who shall then go out of office; provided nevertheless, that whenever any day by this act appointed for any purpose shall in any year happen on a Sunday, in every such case the business so appointed to be done shall take place on the Monday following." (See 7 Will. IV. & 1 Vict. c. 78, s. 25, *post*).

One third part of council to go out of office annually.

31. "Upon the 1st day of November, 1836, and in every succeeding year, one-third part of the number appointed as aforesaid to be the

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(*a*) See, as to other disqualifications, 7 Will. IV. & 1 Vict. c. 78, s. 39, *post*, 132.

(*b*) A. was the lessee and occupier of a certain plot of land situate in the borough of Bridgewater, and belonging to the mayor, aldermen, and burgesses, which was holden by indenture under their seal, made between themselves of the one part, and A. of the other, for fourteen years, with covenants for payment of rent, keeping in repair, and with liberty for A. to remove any building erected during the term. During the continuance of this demise, A. was elected a councillor of the borough:—Held, first, that he was disqualified from being elected a councillor, as this lease was "a contract or employment" within this section; and secondly, that it was a contract "with the council of the borough," whether it was made before or after the passing of this act. (*Reg.* v. *York*, 11 *L. J. R.*, (*N. S.*), *Q. B.* 127).

[While these pages are passing through the press, a bill is pending before Parliament for the purpose of changing the law as declared by the case just cited, and excepting such leases from the operation of sect. 28. This bill, if enacted, will be inserted in the Addenda to the present title.]

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5 & 6 Will. 4, c. 76.

whole number of the councillors of every borough shall go out of office; and in the said year 1836 those who shall go out of office shall be the councillors who were elected under the provisions of this act by the smallest numbers of votes in this present year, and in the next year, 1837, those who shall so go out of office shall be the councillors who were elected under the provisions of this act by the next smallest numbers of votes in this present year, the majority of the whole council always determining when the votes of any such persons shall have been equal, who shall be the persons so to go out of office (*a*); and thereafter those who shall so go out of office shall always be the councillors who have been for the longest time in office without re-election: provided always, that any councillor so going out of office shall be capable of being forthwith re-elected, if then qualified, as herein provided."

Elections to be held before mayor and assessors.

32. "Every election of councillors within any borough according to the provisions of this act shall be held before the mayor and assessors for the time being of such borough, except as herein is excepted; and the voting at every such election shall commence at nine o'clock in the forenoon, and shall finally close at four o'clock in the afternoon of the same day, and shall be conducted in manner following; (that is to say), every burgess entitled to vote in the election of councillors, may vote for any number of persons, not exceeding the number of councillors then to be chosen, by delivering to the mayor and assessors, or other presiding officer as hereinafter mentioned, a voting paper, containing the Christian names and surnames of the persons for whom he votes, with their respective places of abode and descriptions, such paper being previously signed with the name of the burgess voting, and with the name of the street, lane, or other place in which the property for which he appears to be rated on the burgess roll is situated."

Mode of voting

Polling booths to be provided.

33. "At every election in any borough, the mayor, if it shall appear to him expedient for taking the poll at such election, may cause booths to be erected or rooms to be hired and used as such booths for different parts of such borough, which may be situated either in one place or in several places, and shall be so divided and allotted into compartments as to the mayor shall seem most convenient; and the mayor shall appoint a clerk to take the poll at each compartment, and shall cause to be affixed on the most conspicuous part of each of the said booths the names of the parts for which such booth is respectively allotted; and no person shall be admitted to vote at any such election except at the booth allotted for the part wherein the house, warehouse, counting-house, or shop occupied by him as described in the burgess roll may be; but in case no booth shall happen to be provided for any particular part as aforesaid, the votes of the persons voting in respect of property situate in any part so omitted may be taken at any of the said booths; and public notice of the situation, division, and allotments of the different booths shall be given two days before the commencement of the poll by the mayor; and in case the booths shall be situated in different places the mayor may appoint a deputy to preside at each place: provided also, that no election shall be holden under this act in any borough in any church, chapel, or other place of public worship."

No inquiry of the voter except as to his identity, and whether he has voted before at the same election.

34. "No inquiry shall be permitted at any election as to the right of any person to vote as a burgess in any borough, except only as follows; (that is to say) that the mayor or other presiding officer shall, if required by any two burgesses entitled to vote in the same borough, put to any voter at the time of his delivering in his voting paper, and not afterwards, the following questions, or any of them, and no other:—

Forms of questions as to these points.

1. Are you the person whose name is signed as A. B. to the voting paper now delivered in by you?

(*a*) See 7 Will. IV. & 1 Vict. c. 78, s. 10, *post*, 125.

2. Are you the person whose name appears as A. B, on the burgess roll now in force for this borough, being registered therein as rated for property described to be situated in [*here specify the street &c. as described in the burgess roll*] ?
3. Have you already voted at the present election ?

And no person required to answer any of the said questions shall be permitted or qualified to vote until he shall have answered the same; and if any person shall wilfully make a false answer to any of the questions aforesaid, he shall be deemed guilty of a misdemeanor, and may be indicted and punished accordingly" (*a*).

Result of election how to be declared (*b*).

35. "The mayor and assessors shall examine the voting papers so delivered as aforesaid, for the purpose of ascertaining which of the several persons voted for are elected, and so many of such persons, being equal to the number of persons then to be chosen as shall have the greatest number of votes, shall be deemed to be elected; and in case of an equality in the number of votes for any two or more persons, the mayor and assessors, or any two of them, shall name from amongst those persons for whom the number of votes shall be equal, so many as shall be necessary to complete the requisite number of persons to be chosen; and the mayor shall cause the voting papers to be kept in the office of the town clerk during six calendar months at the least after every such election (*c*); and the town clerk shall permit any burgess to inspect the voting papers of any year, on payment of one shilling for every search (*d*), and the mayor shall publish a list of the names of the persons so elected not later than two of the clock in the afternoon of the day next but one following the day of such election, unless such day be Sunday, and then on the Monday following."

(*a*) See form of indictment at the end of this section.

(*b*) After the result of the election has been duly declared under this section, and the name of P. included in the list of town councillors duly published in pursuance of that section, the aldermen and assessors cannot, on the subsequent discovery of a supposed error in counting the legal votes, publish a second list at a later hour on the same day omitting the name of P. and substituting that of R. P., on making the proper declarations, is in *de facto*, and a mandamus will lie to the mayor, &c., to receive and count his vote; leaving the other party to contest the validity of the election by *quo warranto*. (*Reg.* v. *Leeds, Mayor of*, 11 *Ad. & E.* 512: *Reg.* v. *Derby, Councillors of*, 2 *N. & P.* 589).

(*c*) The voting papers given in at the election of councillors under the 5 & 6 Will. IV. c. 76, which, by section 35, the mayor is to cause to be kept in the town clerk's office for six months after the election, are not such public documents as to prove themselves on production from the proper custody. Where, therefore, such papers having been handed over by the mayor to the town clerk were by his clerk delivered over to the clerk of the succeeding town clerk, who produced them at the trial, it was held that the former town clerk also should have been called to prove that the papers transmitted by him were the same which he had received from the mayor. (*Reg* v. *Ledgard*, 3 *Nev. & Per.* 513; 8 *Ad. & E.* 535).

The court will not order a town clerk, against whom a criminal information has been filed for misconduct in his office relating to an election of councillors of the borough, to produce the election papers which are in his official custody, in order that they may be impounded, to be forthcoming at the trial as evidence against him; though it is suggested, that the six months during which the clerk is required to keep the papers will expire before the trial. (*Rex* v. *Nicholetts*, 5 *Ad. & E.* 376).

(*d*) The town clerk is not compellable under this clause to allow two burgesses at once to inspect the voting papers deposited with him after an election of town councillors, or to give more than one of the papers to one person at the same time, but he is bound to allow any burgess who brings a list of his own to compare it with the papers produced by the town clerk, and mark it according to what he finds there. (*Rex* v. *Arnold*, 4 *Ad. & E.* 657).

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5 & 6 Will. 4, c. 76.

An alderman to be chosen to preside at election in case of the death or inability of the mayor.

36. "If the mayor of any borough shall, at the time when it shall be necessary to execute the powers and duties herein provided with respect to elections, be dead, absent, or otherwise incapable of acting, the council of such borough shall forthwith elect one of the aldermen to execute all such powers and duties in the place of the mayor: provided that in the first election of councillors, and of auditors and assessors, as hereinafter provided, the mayor alone shall act with all the powers and duties hereinbefore enacted concerning the mayor and assessors jointly in such elections."

Election of auditors and assessors.

37. "On the 1st day of March, in the year 1836, and in every succeeding year, the burgesses of every borough shall elect from the persons qualified to be councillors by a majority of votes, two burgesses, who shall be and be called auditors of such borough, and two burgesses, who shall be and be called assessors of such borough: and every such auditor and assessor shall continue in office until the 1st day of March in the year following his election; and the election of such auditors and assessors respectively shall be in form and manner hereinbefore provided for the election of councillors: provided nevertheless, that in every such election of auditors or assessors no burgess shall vote for more than one person to be an auditor or assessor: provided also, that no burgess shall be eligible to be or be elected such auditor or assessor as aforesaid who shall be of the council, or the town clerk or treasurer of such borough." (See 7 Will. IV. & 1 Vict. c. 78, s. 15, *post*, 126).

Existing mayors and councillors to go out of office on election of councillors under this act.

38. "After the declaration of the first election of the councillors under the provisions of this act in any borough, the mayor, aldermen, and common councilmen, and all other members of the common council or governing body of the body corporate named in conjunction with such borough in the said Schedules (A.) and (B.), by whatever name or style they may be known or called, then in office, shall go out of office, and their whole powers and duties shall cease: provided, nevertheless, that any of the persons so going out of office shall be eligible to be elected and appointed under the provisions of this act: provided also, that such persons as are justices of the peace in any borough at the time of passing this act shall continue to have and exercise all the powers which at the time of passing this act they have as justices of the peace, until the 1st day of May in the year 1836, and no longer: provided also, that in every borough in which, by statute, charter, bye-law, or custom, any election is appointed to be holden between the day of the passing of this act, and the 1st day of May next, both inclusive, no such election shall be holden, but every person holding office in any borough on the day of the passing of this act shall continue to hold such office, and to have all the powers, and be subject to all the duties, and be entitled to the same salary and fees of such office, as he would have had and been if elected to such office between the day of the passing of this act and the said 1st day of May until the time provided by this act for him to go out of office; any statute, charter, bye-law or custom notwithstanding."

Where boroughs are to be divided into wards, the bounds of the wards to be determined by the barristers appointed to revise the lists.

39. "And whereas it is expedient that certain boroughs of large population should be divided into wards before any election of councillors for such boroughs should take place: be it therefore enacted, that every borough in the said Schedule (A.) shall be divided into the number of wards mentioned in such Schedule in conjunction with the name of such borough; and that it shall be lawful for the barrister or barristers appointed in pursuance of the provisions hereinbefore contained to revise the burgess and councillors' lists of any borough in the present year, and he or they is and are hereby required, within the space of six weeks next after the passing of this act, to determine and set out the extent, limits, and boundary lines of such wards, and what portions of such borough shall be included therein respectively; and the copy of the particulars of such division shall be forthwith transmitted to one of his Majesty's principal secretaries of state, and if his Majesty,

by advice of his privy council, shall approve such determination, shall be published in the London Gazette, and another copy of such particulars shall be delivered to the town clerk of such borough, to be by him safely kept among the public documents of such borough; and every such borough shall after such publication as aforesaid be deemed to be divided into such wards as shall be so determined and set out as aforesaid, and such division shall continue and be in force until the same shall be altered by authority of Parliament: provided always, that if his Majesty, by advice of his privy council, shall not approve such determination, such publication as aforesaid shall nevertheless be made, and such division be in force for the purpose of any election under the provisions of this act, and until such time as his Majesty shall, by advice of his privy council, upon further information and report from such barristers, definitively approve the division of such borough into wards, in manner hereinbefore mentioned."

Number of councillors for each ward to be assigned by the barristers according to certain rules.

40. "The said barrister or barristers shall, after the division of the borough into such number of wards as is directed by this act, apportion among the several wards of such borough the number of councillors mentioned in conjunction with the name of such borough in the said Schedule (A.); and in assigning the number of councillors to each ward the said barrister or barristers shall, as far as in his or their judgment he or they may deem it to be practicable, have regard as well to the number of persons rated to the relief of the poor in such ward as to the aggregate amount of the sums at which all the said persons shall be so rated: provided always, that the number of councillors assigned to each ward shall be a number divisible by three; and a copy of the particulars of the number of councillors so assigned to the several wards of the borough shall be forthwith transmitted to one of his Majesty's principal secretaries of state, and, subject as aforesaid to the approval of his Majesty, by the advice of his privy council, shall be published in the London Gazette, and another copy of such particulars shall be delivered to the town clerk of the borough, to be by him safely kept among the public documents of such borough; and the number of councillors so assigned to each ward of such borough shall, after such publication as aforesaid, be the number to be elected in such ward, and shall so continue until the same shall be altered by authority of Parliament: provided always, that if his Majesty, by the advice of his privy council, shall not approve the number of councillors so assigned to each ward, such publication shall nevertheless be made, and the number of councillors so assigned to each ward of such borough by such barrister shall be the number to be elected in such ward at any election of councillors under this act, until such time as his Majesty shall, by advice of his privy council, upon further information and report from such barrister, definitively approve such assignment in manner hereinbefore mentioned."

Apportionment of councillors for each ward in which the ancient division is adhered to.

41. "And whereas it may be convenient in divers boroughs to adhere in the division of the same into wards to the ancient division thereof into parishes or into districts under any local act, or to adapt such division to local circumstances, and such division so made might render difficult such apportionment of councillors as is hereinbefore directed; be it therefore enacted, that in every such case the said barrister or barristers shall be empowered, at his or their discretion, subject as aforesaid to the approval of his Majesty, by the advice of his privy council, to divide any borough in conjunction with the name of which, in the said Schedule (A.), shall be mentioned any number of wards greater than two, into any number of wards more or less by one than the number of wards mentioned in conjunction with the name of such borough in the said schedule."

Power to examine rate books.

42. "The said barrister or barristers shall have power to require any overseer, or person having the custody of any book containing any rate made for the relief of the poor, in any parish wholly or in part within

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any borough to be divided into wards, to produce such book before, and allow the same to be inspected by the said barrister or barristers; and the said barrister or barristers shall have power to administer an oath to the overseers and to all other persons, who are hereby required to answer upon oath all such questions as the said barrister or barristers may put to them, or any of them, touching any matter which the said barrister or barristers may deem necessary for enabling them to execute the duties by this act imposed upon them."

Councillors and assessors to be elected in wards by the burgesses of such wards.

43. "In every case in which there shall be a division into wards of any borough, the burgesses of every such ward, and none others, shall on the day fixed for the first election of councillors separately elect from the persons qualified to be councillors the whole number of councillors assigned to such ward respectively, and on the 1st day of November in any subsequent year shall separately elect from the persons qualified to be councillors one third part of the whole number of councillors assigned to such ward, and on the 1st day of March next after the first election of councillors in such ward, and in every subsequent year, shall separately elect from the persons qualified to be councillors two assessors for such ward; and every such ward election first after such division into wards of any such borough shall be held before the mayor, or the person whom the mayor for the time being shall appoint in that behalf, and in every succeeding year shall be held before the alderman (*a*) whom the councillors chosen in such ward shall yearly appoint in that behalf, and before the two assessors of such ward; and the assessors who shall hold the court for revising the burgess lists with the mayor shall be the assessors of the mayor's ward (*b*), and the votings and other proceedings in all other respects at such ward elections shall be conducted in the same manner as at elections of councillors or assessors respectively by the burgesses of the whole borough, and the alderman and assessors of each ward shall have the same powers in regard to elections in their ward as the mayor and assessors for the whole borough if not divided into wards; and every person so elected a councillor or assessor in such ward shall hold his office for the same time that he would have held it if he had been elected by the burgesses of the whole borough, and if the number elected in such ward had been the whole number for the borough."

Burgesses to vote in the ward in which their property is situated.

44. "Every burgess of any borough shall be entitled to vote in the election of the councillors and assessors to be chosen within that ward in which the property of such burgess for which he appears to be rated on the burgess roll for the time being of such borough shall appear to be situated, and not otherwise; and if any burgess shall be rated in respect of distinct premises in two or more wards, then he shall be entitled to be enrolled and to vote in such one of the said wards as he shall select, but not in more than one."

Lists of the burgesses in each ward to be made out yearly.

45. "For the purpose of better ascertaining who are the burgesses of any such ward, the burgess roll of every borough so divided into wards, shall thenceforward be made out by or under the direction of the town clerk, in alphabetical lists of the burgesses in each ward, to be called 'Ward Lists.'"

Manner of proceeding if any person is elected a councillor in more than one ward

46. "If at any election of councillors or assessors for any borough any person shall be elected a councillor or assessor in more than one of the wards of such borough, he shall within three days after notice thereof choose, or on his default the mayor shall declare for which one of the said wards such councillor or assessor shall serve, and such person shall thereupon be held to be elected in that ward only which he shall so choose, or which the mayor shall so declare."

(*a*) As to election of aldermen see 7 Will. IV. & 1 Vict. c. 78, s. 14, *post*, 124.

(*b*) See this section in part repealed by 7 Will. IV. & 1 Vict. c. 78, s. 4, *post*, 124.

Occasional vacancies of councillor, auditor, or assessor, to be filled up by fresh election (*a*).

47. "If any extraordinary vacancy shall be occasioned in the office of councillor, auditor, or assessor for any borough, the burgesses entitled to vote shall, on a day to be fixed by the mayor of such borough, or in the case of a councillor or assessor, where the borough shall have been divided into wards, by the alderman of the ward in which the vacancy has happened, (such day not to be later than ten days after such vacancy), elect from the persons qualified to be councillors another burgess to supply such vacancy; and such election shall be held, and the voting and other proceedings, in case of a contest, shall be conducted in the same manner, and subject to the same provisions as are hereinbefore enacted with respect to the election of councillors as aforesaid; and every person so elected shall hold such office until the time at which the person in room of whom he was chosen would regularly have gone out of office, and he shall then go out of office, but shall be capable of immediate re-election if then qualified as herein provided: provided always, that after the full number to be regularly elected of the councillors in any year shall have declared their acceptance of office, no new election of councillors shall be made by reason of such extraordinary vacancy, unless the number of councillors remaining after such vacancy shall not exceed two thirds of the whole number of the council of such borough."

Penalties on mayor, overseers, &c. neglecting to comply with provisions of this act (*b*).

48. "If any mayor, alderman, or assessor of any borough, who shall be in office at the time herein appointed for the revision by them of the burgess list under this act, or for any election of councillors, assessors, or auditors, which he is required to conduct or declare, shall neglect or refuse to revise such burgess list, or to conduct or declare such election as aforesaid, every such mayor, alderman, and assessor shall, for every such offence, forfeit and pay the sum of one hundred pounds; and if any overseer of any parish wholly or in part within any borough shall neglect or refuse to make out, sign, and deliver such list as aforesaid, or if the town clerk of any borough shall neglect or refuse to receive, print, and publish such lists as aforesaid, or if any such overseer or town clerk shall refuse to allow any such lists to be perused by any person having right thereunto, every such overseer and town clerk respectively for every such offence shall forfeit and pay the sum of fifty pounds; and the said penalties hereby in such case imposed shall be recovered, with full costs of suit, by any person who will sue for the same within three calendar months after the commission of such offence, by action of debt or on the case, in any of his Majesty's superior courts of record; and the money so to be recovered shall, after payment of the costs and expenses attending the recovery thereof, be paid and apportioned as follows; (that is to say), one moiety thereof to the person so suing, and the other moiety thereof to the treasurer, to be appointed by virtue of this act, to be by him applied in aid of the borough fund hereinafter mentioned."

Council to elect the mayor every year from the councillors

49. "On the ninth day of November in every year the council of the borough shall elect out of the aldermen or councillors of such borough a fit person to be the mayor of such borough, who shall continue in his office for one whole year; and in case a vacancy shall be occasioned in the office of mayor of the borough during such year by reason of any person who shall have been elected to such office not accepting the

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(*a*) See the provisions of this section in part repealed, and further enactments as to the supplying of vacancies, 7 Will. IV. & 1 Vict. c. 78, ss 11, 12, 13, *post*, 125.

(*b*) See *ante*, 63, n. (*a*), as to the recovery of penalties under this section. An overseer who neglects to make out a burgess list, is only liable for one penalty under this section, and cannot be sued for a second penalty for refusing a perusal of the same burgess list. (*Gregory* v. *Fell*, 6 Jur. 422, Exch.) But each overseer who neglects to sign the burgess list incurs the penalty; and all the overseers of a parish divided into districts must sign the list for that parish. (*King* v. *Share*, 11 *L. J. R.* (N. S.) Q. B. 163; and see *King* v *Burrell*, *ante*, p. 64).

same, or by reason of his dying or ceasing to hold the said office, the council of the borough shall, within ten days after such vacancy, elect out of the aldermen or councillors of the said borough another fit person to be the mayor thereof for the remainder of the then current year."

As to the manner of conducting the election of mayor, aldermen, and councillors, according to the directions contained in the preceding sections, the following cases have been decided :—

The quarterly meeting appointed (s. 69) to be held at noon on the 9th of November, ought to be the first, if not the only meeting of the council on that day, and the first act to be done ought to be the election of a mayor.

If new aldermen be elected, either at such quarterly meeting or at an earlier meeting held on the same day, but before the election of the mayor, such election of aldermen is void.

Sect. 25 does not prevent the outgoing aldermen from voting in the election of mayor, although the candidate for whom they vote be an alderman. Also, the person elected may be an outgoing alderman: and if he afterwards preside at the election of aldermen, he may at such election (under the 7 Will. IV. & 1 Vict. c. 78, s. 14, *post*) give a casting vote, but not an original vote; for the mayor's right to vote in the first instance under 5 & 6 Will. IV. c. 76, s. 69, is restricted by the 25th section of that act, when the mayor is an outgoing alderman. (*Reg.* v. *M'Gowan, Dudley, Maddy,* and *Stanley,* 11 *Ad. & E.* 869).

An election of alderman by lists, where each elector has the opportunity of objecting to any of the lists proposed, or of proposing and voting for any other candidate, is good. (*Reg.* v. *Brightwell,* 2 *Per. & D.* 413; 10 *Ad. & E.* 171).

No person is eligible to the office of alderman, unless his name appears on the burgess roll in force for the current municipal year during which he is elected. (*Reg.* v. *Hervey,* 2 B. T. Vac. 1842).

The returning officer, at an election of councillors, has merely the ministerial duty to perform of returning the candidates who have the actual majority of votes, without reference to their possessing or not, in his judgment, the proper qualification: and where, to a *quo warranto* for exercising the office of councillor, the defendant pleaded that he was duly elected, and issue was joined thereon, it was held sufficient for the relator to prove at the trial that other candidates had the actual majority, without proving their qualification. (*Reg.* v. *Ledgard,* 3 *Nev. & P.* 513; 8 *Ad. & E.* 535).

The votes given at a municipal election for a candidate rendered ineligible by the express words of an act of Parliament, in consequence of his holding another office in the same corporation, are not thrown away unless express notice of the ineligibility has been given to the voters. And, therefore, at an annual election of councillors in one of the wards of a borough divided into two wards, a majority of votes was declared in favour of a candidate who was an assessor for the other ward. No notice of the ineligibility of this candidate had been given, but the mayor rejected his name from the list published by him pursuant to section 35, and inserted the name of a candidate having a minority of votes, who accepted the office. The court granted a *quo warranto* against the latter candidate. (*Reg.* v. *Hiorns,* 3 *Nev. & P.* 48; 7 *Ad. & El.* 963).

A councillor of Lichfield having been absent from the borough for more than six months, the town council, in October, declared his place vacant according to the provisions of sect. 52, and appointed the following 1st of November for the election of a councillor in his stead. On the same 1st of November three other councillors, whose triennial period of service had expired, went out of office, and the election to fill up the four vacant places was held on the same day. No distinction was made either in the proclamation of the lists of candidates or in the

voting papers, between the candidates for the extraordinary vacancy occasioned by absence, and the candidates for the ordinary vacancies, so that it could not be discovered who was elected to fill the former place as distinguished from the latter. The court held an election conducted in this manner clearly irregular. (*Reg.* v. *Rawley, Q. B., E. T., May* 6, 1842).

Mayor, aldermen, and councillors, auditors, and assessors, not to act until they have made a declaration of acceptance of office.

Sect. 50. "No person elected a mayor, alderman, or councillor, or auditor or assessor, for any borough, shall be capable of acting as such, except in administering the declaration hereinafter contained, until he shall have made and subscribed before any two or more such aldermen or councillors (who are hereby respectively authorized and required to administer the same to each other) a declaration in the words or to the effect following; (that is to say),

I, A. B, having been elected mayor [or "*alderman, councillor, auditor, or assessor*"] *for the borough of , do hereby declare, that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability;* [and in the case of the party being qualified by estate say], *and I do hereby declare that I am seised or possessed of real or personal estate* [or both, as the case may be] *to the amount of one thousand pounds* [or "*five hundred pounds,*" as the case may require], *over and above what will satisfy all my debts.*

Aldermen, if required, to make a declaration of qualification once in three years (*a*).

"And that every alderman who shall have made and subscribed the foregoing declaration in respect of estate shall once in every period of three years, if required in writing so to do by any two members of the council, make and subscribe a declaration that he is qualified to the same amount in real or personal estate, or both, as the case may then be, as the amount mentioned in the declaration originally made and subscribed by him: provided always, that nothing in this act contained shall be construed to dispense with the obligation of any person to make and subscribe the declaration provided and enjoined by an act made in the ninth year of his late Majesty George the Fourth, intituled 'An Act for repealing so much of several Acts as imposes the necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments.'" *See "Oaths," Vol. V., and "Office and Officers,"* (*ib.*)

9 Geo. 4, c. 17 (*c*).

Every burgess elected to the office of alderman, councillor, auditor, or assessor, and every councillor elected to the office of mayor, shall accept the office or pay a fine to the borough fund (*b*).

51. "Every person duly qualified who shall be elected to the office of alderman, councillor, auditor, or assessor, and every councillor who shall be elected to the office of mayor for any borough, shall accept such office to which he shall have been elected, or shall in lieu thereof pay to the mayor, aldermen, and burgesses of such borough such fine not exceeding fifty pounds in case of aldermen, councillors, auditors, or as-

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(*a*) Instead of the declaration prescribed by the 9 Geo. IV. c. 9, Quakers, Moravians, and Separatists, elected to any office in any corporation, are permitted to make the following declaration by the 1 & 2 Vict. c. 5, and c. 15.

I, A. B., being one of the people called Quakers, (*or one of the persuasion of the people called Quakers, or of the united brethren called Moravians, or of the denomination called Separatists, as the case may be*), *having conscientious scruples against subscribing the declaration contained in an act passed in the ninth year of the reign of King George the Fourth, intituled "An Act for repealing so much of several Acts as imposes the necessity of receiving the Sacrament of the Lord's Supper as a Qualification for certain Offices and Employments," do solemnly, sincerely, and truly declare and affirm that I will not exercise any power or authority or influence which I may possess by virtue of the office of to injure or weaken the Protestant Church as it is by law established in England, nor to disturb the said church, or the bishops and clergy of the said church, in the possession of any rights or privileges to which such church or the said bishops and clergy may be by law entitled.*

(*b*) See *post*, n. (*a*) to sect. 72.

(*c*) Though an officer omit to make the declaration prescribed by this act, he is still in office until removed by *quo warranto*. (*Reg.* v. *Cambridge* (*Mayor*), 12 *Ad. & Ell.* 702).

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5 & 6 Will. 4, c. 76.

sessors, and such fine not exceeding one hundred pounds in case of mayor, as the council of such borough by a bye-law to be made as hereinafter provided shall declare in that behalf; and such fine, if not duly paid, shall be levied by the warrant of any justice having jurisdiction within the borough, who is hereby required on the application of the council to issue the same, by distress and sale of the goods and chattels of the person so refusing to accept office, with the reasonable charges of such distress; and every such person so elected shall accept such office by making and subscribing the declaration hereinbefore mentioned within five days after notice of his election, otherwise such person shall be liable to pay the said fine as for his non-acceptance of such office, and such office shall thereupon be deemed to be vacant, and shall be filled up by a fresh election, to be made in the manner hereinbefore mentioned: provided always, that no person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, shall be liable to such fine as aforesaid; provided also, that every person so elected to any such office who shall be above the age of sixty-five years, or who shall have already served such office respectively, or paid the fine for not accepting such office respectively, within five years from the day on which he shall be so re-elected, shall be exempted from accepting or serving the same office if he shall claim such exemption within five days after notice of his election: provided always, that nothing in this act contained shall extend to compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in his Majesty's service on full pay, or by any officer or other person employed and residing within any of his Majesty's dockyards, victualling establishments, arsenals, or barracks."

Exemptions.

Any mayor, alderman or councillor, if he shall be declared bankrupt or insolvent, or absent himself from the borough, shall lose his office (*a*);

52. Provided always, "that if any person holding the office of mayor, alderman, or councillor for any borough shall be declared bankrupt, or shall apply to take the benefit of any act for the relief of insolvent debtors, or shall compound by deed with his creditors, or being mayor shall be absent for more than two calendar months, or being an alderman or councillor for more than six months at one and the same time, unless in case of illness, from the borough of which he shall be mayor, alderman, or councillor, then and in every such case such person shall thereupon immediately become disqualified and shall cease to hold the office of such mayor, alderman, or councillor as aforesaid, and in the case of such absence shall be liable to the same fine, to be recovered in the same manner as if he had refused to accept the said office; and the council thereupon shall forthwith declare the said office to be void, and shall signify the same by notice in writing under the hands of three or more of them, countersigned by the town clerk, to be affixed in some public place within the borough, and the said office shall thereupon become void; but every person so becoming disqualified and ceasing to hold such office on account of his being declared a bankrupt, or of his applying to take the benefit of any act for the relief of insolvent

and the council shall thereupon declare the office void (*b*).

(*a*) A bankrupt uncertificated at the time of election is not disqualified from being elected a councillor. The disqualification exists only where the bankruptcy occurs during the holding of the office. (*Rex* v. *Chitty*, 1 *Nev. & P.* 78; 5 *Ad. & E.* 609).

(*b*) Previous to the annual election of councillors in November, in a borough divided into wards, the mayor published a notice, purporting to be made with the concurrence of the aldermen and assessors, to the effect that two vacancies were to be filled up, one in the room of A. B. going out by rotation, and one in the room of C. D., who had been declared a bankrupt. The council had not declared the office of C. D. to be void, or given any notice thereof. At the election, 250 burgesses voted for two candidates jointly, and 120 voted for a third singly:—Held, that the votes given for the two candidates were thrown away, and that the third candidate, to whom the 120 votes were given, was duly elected. (*Reg.* v. *Leeds, Mayor of*, 3 *Nev. & P.* 145; 7 *Ad. & E.* 963; and see *Rex* v. *Oxford, Mayor of*, 6 *Ad. & E.* 349)

debtors, or having compounded with his creditors as aforesaid, shall, on obtaining his certificate or on payment of his debts in full, be capable (if otherwise qualified) of being re-elected to such office; and every person becoming disqualified to hold such office on account of absence as aforesaid shall on his return to such borough be capable of being re-elected to such office, provided he shall then be otherwise qualified."

Penalty on persons not qualified, &c. acting as mayor, alderman, or councillor.

53. "If any person shall act as mayor, alderman, or councillor, or auditor or assessor, for any borough, without having made the declaration hereinbefore required in that behalf, or without being duly qualified at the time of making such declaration, or after he shall cease to be qualified according to the provisions of this act, or after he shall have become disqualified to hold any such office, he shall for every such offence forfeit the sum of fifty pounds, such sum to be recovered, with full costs of suit, by any person who will sue for the same within three calendar months after the commission of such offence, by action of debt or on the case, in any of his Majesty's superior courts of record; and every person so sued by reason of not being so qualified in respect of estate shall prove that he was at the time of so acting qualified as aforesaid, or otherwise shall pay the said penalty, without any further evidence being given on the part of the plaintiff than that such person has acted as the mayor, or as alderman, councillor, auditor, or assessor (as the case may be) of such borough: provided always, that it shall be lawful for any defendant, by judge's order to be obtained within fourteen days after he shall have been served with process in any such action, to require the plaintiff to give security for costs; and in such case all further proceedings in the said cause shall be stayed until the plaintiff shall give security to the satisfaction of the proper officer of the court for the costs of such action in case a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue such action, or if upon demurrer or otherwise, judgment shall be given against the plaintiff; and the defendant shall in either of such cases recover his full costs as between attorney and client: provided also, that no such action shall be brought except by a burgess of such borough, nor unless the burgess bringing the same shall, within fourteen days after the commission of the offence, have served a notice in writing personally upon the party committing such offence of his intention to bring such action; and in case the plaintiff in any such action shall obtain a verdict, the money so to be recovered shall, after payment of the costs and expenses attending the recovery thereof, be paid and apportioned as follows; (that is to say), one moiety thereof to the person so suing, and the other moiety thereof to the treasurer to be appointed by virtue of this act, to be by him applied in aid of the borough fund: provided always, that all acts and proceedings of any person in possession of the office of mayor, alderman, councillor, auditor, or assessor, and acting as a mayor, alderman, councillor, auditor, or assessor, shall, notwithstanding such disqualification or want of qualification, be as valid and effectual as if such person had been duly qualified."

Proviso.

Persons convicted of bribery disqualified from voting at any election in the borough (a).

54. "If any person who shall have or claim to have any right to vote in any election of mayor, or of a councillor, auditor, or assessor of any borough, shall, after the passing of this act, ask or take any money or other reward by way of gift, loan, or other device, or agree or contract for any money, gift, office, employment, or other reward whatsoever, to give or forbear to give his vote in any such election, or if any person, by himself or any person employed by him, shall, by any gift or reward, or by any promise, agreement, or security for any gift or reward, corrupt or procure, or offer to corrupt or procure, any person to give or forbear to give his vote in any such election, such person so offending in any of the cases aforesaid, shall, for every such offence, forfeit the

(a) See *Harding* v. *Stokes*, 1 *Mee. & W.* 354, and a form of declaration there; and see *id.* 2 *Mee. & W.* 233.

Corporations.

5 & 6 Will. 4, c. 76.

sum of fifty pounds of lawful money of Great Britain, to be recovered, with full costs of suit, by any one who shall sue for the same, by action of debt, bill, plaint, or information in any of his Majesty's courts of record at Westminster; and any person offending in any of the cases aforesaid, being lawfully convicted thereof, shall for ever be disabled to vote in any election in such borough, or in any municipal or Parliamentary election whatever in any part of the United Kingdom, and also shall for ever be disabled to hold, exercise, or enjoy any office or franchise to which he then shall, or at any time afterwards may be, entitled as a burgess of such borough, as if such person was naturally dead."

Persons offending in any of the cases aforesaid discovering others so offending to be discharged from all penalties.

55. "If any person offending in any of the cases aforesaid shall, within the space of twelve months next after such election as aforesaid, discover any other person offending in any of the cases aforesaid, so that such other person be thereon convicted, such person so discovering, and not having been before that time convicted of any such offence, shall be indemnified and discharged from all penalties and disabilities which he shall then have incurred by any such offence."

No person liable to incapacity, penalty, &c unless prosecuted within two years.

56. "Provided always, that no person shall be made liable to any incapacity, disability, forfeiture, or penalty by this act imposed, in any of the cases aforesaid, unless prosecution be commenced within two years after such incapacity, disability, forfeiture, or penalty shall be incurred, anything herein contained to the contrary notwithstanding."

The mayor to be a justice of the peace for the borough and returning officer at elections of members to serve in Parliament (*a*).

57. "The mayor for the time being of every borough shall be a justice of the peace of and for such borough, and shall continue to be such justice of the peace during the next succeeding year after he shall cease to be mayor, unless disqualified as aforesaid; and such mayor shall (during the time of his mayoralty) have precedence in all places within the borough, and in boroughs which return a member or members to serve in Parliament, other than the town of Berwick-upon-Tweed, and other than cities and towns which are counties of themselves, shall be the returning officer at all such elections; and in case the mayor shall, at the time when he shall be required to perform the duties of such returning officer, be dead, absent, or otherwise incapable of acting, or in case there shall be no mayor, the council of such borough shall forthwith elect one of the aldermen to be the returning officer for such borough in the place of the mayor being so dead, absent, or otherwise incapable: provided always, that in every case where there shall be more than one mayor within the boundaries of any borough, as the same are or shall at any future time be settled in so far as respects the election of members to serve in Parliament, the mayor of that borough to which the writ of election shall be directed shall be the returning officer."

Power to council to appoint town clerk, treasurer, and other officers (*b*).

58. "The council of every borough, on the 9th day of November in this present year, shall appoint a fit person, not being a member of the council, to be the town clerk of such borough, who shall hold his office during pleasure; and in any borough may be an attorney of one of his

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(*a*) By the stat. 3 & 4 Vict. c. 47, (4 August, 1840), the enactment in the 9 Anne, c. 20, "that no person or persons who had been or should be in the annual office of mayor, bailiff, or other officer or officers to whom it belonged to preside at the election and make return of any member to serve in Parliament, for one whole year, should be capable to be chosen into the same office for the year immediately ensuing," &c. &c., is repealed; and it is further enacted, "that no person who shall before the passing of this act have been re-elected into any office by virtue of which it belongs to him to preside at any election, or make return of any member to serve in Parliament, shall be deemed to have been incapable of being chosen into such office, or be liable to have his right to exercise such office questioned, by reason of so much of the recited act as is hereby repealed. (s. 2.) (See *Reg.* v. *Corporation of Pembroke*, 8 *Dowl. P. C.* 302.)

(*b*) The office of town clerk, under the New Corporation Act, is not the same as in the old corporations; and an objection to his title under the new act is not aided by the fact of his having held the office for more than six years before the new act passed, under

5 & 6 Will 4, c. 76.

Majesty's superior courts at Westminster, any law, statute, charter, or usage to the contrary notwithstanding; and the council of every borough shall in every year appoint another fit person, not being a member of the council, to be the treasurer of the borough, and also such other officers as have been usually appointed in such borough, or as they shall think necessary for enabling them to carry into execution the various powers and duties vested in them by virtue of this act, and may from time to time discontinue the appointment of such officers as shall appear to them not necessary to be re-appointed; and shall take such security for the due execution of his office by any such town clerk, treasurer, or other officer, as the said council shall think proper; and shall order to be paid to the mayor, and to the town clerk and treasurer, and to every such other officer to be employed as aforesaid, such salary or allowance as the said council shall think reasonable; and in case of a vacancy in any such office as aforesaid by death, resignation, removal, or otherwise, the council of such borough may appoint another fit person in the place of the person so making such vacancy; provided that the town clerk and treasurer shall not be the same person."

and to take security for the discharge of their official duties.

Salaries.

59. "The treasurer of any borough shall pay no money on account of the mayor, aldermen and burgesses of such borough, save only in such case as is provided by this act, or upon the order in writing of the council, signed by three or more members of the council, and countersigned by the town clerk of such borough, or by order of the court of sessions of the peace for the borough, or of a justice of the peace acting in and for the borough in the discharge of his judicial duty, in such case as is provided by this act, or in such case as a court of sessions of the peace for any county, or a justice of the peace acting in and for a county in the discharge of his judicial duty, may make an order for the payment of money on the treasurer of such county, or for the payment of the salaries granted to any recorder or police magistrate as hereinafter provided."

Treasurer to pay no money but by order of council.

60. "Every town clerk, treasurer, or other officer appointed by the council as aforesaid, shall, at such times during the continuance of his office, or within three months after the expiration of his office, and in such manner as the said council shall direct, deliver to the council, or to such person as they shall authorize for that purpose, a true account in writing of all matters committed to his charge by virtue of this act, and also of all monies which shall have been by him received by virtue or for the purposes of this act, and how much thereof shall have been paid and disbursed, and for what purposes, together with proper vouchers for such payments, and also of a list of the names of all such persons as shall not have paid the monies due from them for the purposes of this act, and of the amount due from each of them; and every such officer shall pay all such monies as shall remain due from him to the

Officers to account &c. according to the orders of the council.

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a valid appointment. (*Rex* v. *Poole*, 1 *Jur.* 942). Although a candidate for the office of town clerk might, before the 6 & 7 Will. IV. c. 104, s. 8, *post*, 138, have been disqualified as a candidate, by reason of his being unable to resign his office as a member of the town council, yet the mayor was bound at a contested election to put the question, whether he should or should not be elected. (*Rex* v. *Shebbeare*, 1 *Jur.* 7). The town clerk of a borough cannot maintain an action of debt against the corporation for fees in respect of the performance of duties imposed upon him by this act or by the Reform Act, and which these acts make imperative. And no contract on the part of the corporation to pay such fees will be implied, although the town clerk received no stated salary; and, before the passing of this act, payments were made to him by the corporation for the performance of duties imposed on him by the Reform Act. (*Jones* v. *Carmarthen* (*Mayor of*), 8 *M. & W.* 605). A town clerk has a lien on papers of the corporation with respect to which he has done work as attorney or solicitor, but not on such as he holds merely as town clerk. (*Rex* v. *Simkins*, 5 *Ad. & E.* 423).

Corporations.

5 & 6 Will. 4, c. 76.

Summary remedy against officers for not accounting, or neglecting to deliver up all books, papers, &c. (a).

treasurer for the time being, or to such person as the said council shall authorize to receive the same; and if any such officer shall refuse or wilfully neglect to deliver such account, or the vouchers relating to the same, or such list as aforesaid, or to make payment as aforesaid, or shall refuse or wilfully neglect to deliver to the said council, or to such person as they shall authorize, within three days after being thereunto required by notice in writing under the hands of any three or more of the said council, to be given to or left at the last place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this act, or to give satisfaction to the said council, or to such other person as aforesaid, respecting the same, then and in every such case, upon complaint made on behalf of the said council, by such person as they shall authorize for that purpose, of any such refusal or wilful neglect as aforesaid, to any justice of the peace for the county or other jurisdiction wherein such officer so refusing or neglecting shall be or reside, such justice is hereby authorized and required to issue a warrant under his hand and seal for bringing such officer before any two justices of the peace for such county or jurisdiction; and upon the said officer appearing, or not being found, it shall be lawful for such justices to hear and determine the matter in a summary way; and if it shall appear to such justices that any monies remain due from such officer, such justices may and they are hereby authorized and required, upon non-payment thereof, by warrant under their hands and seals, to cause such monies to be levied by distress and sale of the goods of such officer; and if sufficient goods shall not be found to satisfy the said monies and the charges of the distress, or if it shall appear to such justices that such officer has refused or wilfully neglected to deliver such account, or the vouchers relating thereto, or such list as aforesaid, or that any books, papers, or writings relating to the execution of this act remain in the hands or in the custody or power of such officer, and that he has refused or wilfully neglected to deliver the same, or to give satisfaction respecting the same as aforesaid, then and in every such case such justices shall and they are hereby required to commit such offender to the common gaol or house of correction for the county or jurisdiction where such offender shall be or reside, there to remain without bail until he shall have paid such monies as aforesaid, or shall have compounded with the said council for such monies, and shall have paid such composition in such manner as they shall appoint, (which composition the said council are hereby empowered to make and receive), or until he shall have delivered a true account as aforesaid, together with such vouchers and list as aforesaid, or until he shall have delivered up such books, papers and writings, or have given satisfaction in respect

(a) Under this section and sect. 65, county magistrates may determine complaints against corporate officers refusing to deliver up papers, though such officers reside within the precincts of the corporation, and the corporation have magistrates. (*In re Gateshead (Justices)*, 6 *Ad. & E.* 550, n.) Three magistrates, acting under this section, committed the crier of the borough to the county gaol, until he should deliver up the bell, which was stated in the conviction and commitment to be the property of the council of the borough. This conviction was afterwards quashed on appeal:—Held, that the magistrates had jurisdiction to convict; and, there being nothing on the face of the conviction to make it void, that trespass would not lie against the magistrates. (*Baylis* v. *Strickland*, 1 *Scott, N. R.* 540; 1 *Man. & G.* 592. See the forms of the information and warrant of commitment in this case, at the end of this section).

The insertion of the name of a town in Schedule A. of the Municipal Corporation Reform Act, is *primâ facie* evidence of the existence of a municipal corporation there; but if facts be adduced on affidavit to negative that presumption, a *mandamus* will not issue to compel the delivery of books, papers, monies, &c., by the ancient officers of the town to the council elected under the new act. (*Reg.* v. *Greene*, 1 *Nev. & Per.* 63; 6 *Ad. & E.* 548).

5 & 6 Will. 4, c. 76.

thereof, to the said council, or to such other person as aforesaid, as the case may be: provided always, that no person so committed shall be detained in prison for want of sufficient distress only for a longer space of time than three calendar months: provided also, that nothing in this act contained shall prevent or abridge any remedy by action against any such officer so offending as aforesaid, or against any surety for any such officer, but such officer shall not be sued by action and also proceeded against in a summary manner by virtue of this act for the same cause."

Proviso.

Remedy by action.

61. "In the city of Oxford, in the town of Berwick-upon-Tweed, and in the counties of the cities of Bristol, Canterbury, Chester, Coventry, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester, and York, and in the counties of the towns of Carmarthen, Haverfordwest, Kingston-upon Hull, Newcastle-upon-Tyne, Nottingham, Poole, and Southampton, the council shall on the first day of November [altered to ninth of November by 6 & 7 Will. IV. c. 105, s. 5, *post*, 140], in every year appoint a fit person to execute the office of sheriff, with the like duties and powers as the sheriff or the person filling the office of sheriff in the said town and counties respectively would have had if this act had not passed; and every person who, at the time of the passing of this act, shall hold the office or execute the duties of sheriff in the said town and counties respectively shall continue to hold and execute the same until the first appointment of a sheriff therein under the provisions of this act, and no longer."

Councils of cities and towns which are counties to name a sheriff.

62. "The council of every borough in which a separate court of quarter sessions of the peace shall be holden, as is hereinafter provided, shall, within ten days next after the grant of the said court shall have been signified to the council of such borough, appoint a fit person, not being an alderman or councillor, to be coroner of such borough so long as he shall well behave himself in his office of coroner, and shall fill up every vacancy of the office of coroner of the borough, by death, resignation, or removal, within ten days next after such vacancy shall have occurred, and none thereafter shall take any inquisition which belongs to the office of coroner within such borough save only the coroner so from time to time to be appointed; and every such coroner, for every inquisition which he shall duly take within such borough, shall be entitled to have the sum of twenty shillings, and also the sum of ninepence for every mile exceeding two miles which he shall be compelled to travel from his usual place of abode to take such inquisition, to be paid by the treasurer out of the borough fund of such borough, by order of the court of quarter sessions for such borough."

In certain boroughs, council to appoint a coroner.

63. "On or before the first day of February in every year after the passing of this act, every coroner appointed in any borough shall make and transmit to one of his Majesty's principal secretaries of state a return in writing, according to such form as the said secretary of state from time to time shall direct, of all the cases in which he may have been called upon to hold an inquest touching the cause of death of any person during the year ending on the thirty-first day of December immediately preceding."

Coroners to make returns to secretary of state.

64. "In every borough in and for which no separate court of quarter sessions of the peace shall be holden, no person from and after the end of this present year shall take any inquisition which belongs to the office of coroner within such borough, save only the coroner for the county or district in which such borough is situated; and the coroner of such county or district, for every inquisition which he shall duly take within any place or precinct within any such borough, shall be entitled to have such ratable fees and salary as would be allowed and due to him, and to be allowed and paid in like manner as for any other

County coroners to act in other boroughs (*a*).

(*a*) See 6 & 7 Will. IV. c. 105, s. 6, *post*, 140, allowing the coroner to appoint a deputy in certain cases.

Corporations.

5 & 6 Will. 4, c. 76.

inquisition taken by him within such county: provided always, that nothing in this act contained shall extend or be construed to annul, diminish, or affect the authority of the lord high admiral, or of the commissioners for executing the office of lord high admiral of the United Kingdom for the time being, or of the judge of the high court of admiralty of England, as the lieutenant of the lord high admiral in the said court, to appoint coroners to act within the jurisdiction of the admiralty in the several ports and havens, and on the sea coast of England, and to take inquisitions touching deaths happening within the said jurisdiction, as hath heretofore been done."

Council empowered to remove certain officers (a).

65. "The council elected under this act in any borough shall have power to remove from his office every bailiff, treasurer, or chamberlain, and every other ministerial or executive officer of such borough and body corporate who shall be in office at the time of the first election of councillors under this act; and every such bailiff, treasurer, or chamberlain, and every other ministerial or executive officer in such borough, shall continue to act in the same capacity as heretofore, and to execute all the duties heretofore belonging to his office, and be entitled to have the same salaries, fees, and emoluments as he would have had if this act had not passed, until he shall be removed from his office, and no longer, unless he shall be re-appointed according to the provisions of this act; and every officer who shall be in possession or receipt of any monies, goods, valuable securities, books, and papers belonging to or concerning the body corporate whose officer he is, shall deliver up and account for the same to the council of such body corporate appointed under this act; and the council shall have the same remedy against such officer to recover the same as is hereinbefore provided in the case of officers appointed by such council: provided always, that all the charters, deeds, muniments, and records of every borough, or relating to the property thereof, shall be kept in such place as the council from time to time shall direct, and the town clerk for the time being shall have the charge and custody of and be responsible for the same."

Such officers to continue until removed (b).

Ante, s. 60.

Officers to receive compensation on removal (c).

66. "Every officer of any borough or county who shall be in any office of profit at the time of the passing of this act, whose office shall be abolished, or who shall be removed from his office under the provisions of this act, or who shall not be re-appointed as aforesaid, shall be entitled

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(*a*) To justify the removal of a corporate officer, there must be misconduct specially in the execution of his office; and misconduct in duties which he has performed for the corporation, but which are not necessarily any part of his official duty, is not sufficient. (*Reg.* v *Newbury* (*Mayor*, &c), 1 *Gale & D* 388). A refusal by the town clerk to deliver up to the town council certain corporation documents and the corporation seal, and an opposition by him to a petition by the council to obtain the appointment of charity trustees, do not constitute sufficient cause to warrant his removal from an office held during good behaviour. Nor is such cause furnished by acting in concert with another person who addressed abusive language to an alderman and magistrate of the borough in a public part of the borough. (*Reg.* v. *Treasury* (*Lords*), *In re Tibbits*, 2 *Per. & D.* 498; 10 *Ad. & E* 371).

(*b*) By 6 & 7 Will. IV. c. 104, s. 8, *post*, 138, corporate offices may be resigned on payment of a fine, &c.

(*c*) As to the persons entitled to receive compensation under this clause, and the mode of enforcing their claims, see, *Reg.* v. *Newbury* (*Mayor*), 1 *Gale & D.* 388; *Reg.* v. *Swansea* (*Mayor*), 11 *Ad. & E.* 66; *Reg.* v. *Carmarthen* (*Mayor*), 11 *Ad. & E.* 9; *Reg.* v. *Cambridge* (*Mayor*), 4 *Per. & D.* 294; *Reg.* v. *Corporation of Warwick*, 10 *Ad. & E* 386; *Reg.* v. *Treasury* (*Lords*), 10 *Ad. & E.* 374; *Id.* 179; *Reg.* v. *York* (*Mayor*), 8 *Dowl. P. C.* 502; *Reg.* v. *Pool* (*Corporation*), 7 *Ad. & E.* 730; *Reg.* v. *Sandwich*, (*Mayor*), 2 *G. & D.* 28; and numerous other cases which will be found referred to in those above cited. The jurisdiction of the Court of Chancery is not taken away by this section. An officer *resigning* his office is not entitled to compensation under the act (*Att.-Gen* v. *Corporation of Poole*, 2 *Kee.* 190).

to have an adequate compensation, to be assessed by the council, and paid out of the borough fund, for the salary, fees, and emoluments of the office which he shall so cease to hold, regard being had to the manner of his appointment to the said office, and his term or interest therein, and all other circumstances of the case; and every person entitled to such compensation as aforesaid shall deliver to the town clerk, or in case such person shall himself be town clerk, then to the treasurer of the borough, a statement under the hand of such person setting forth the amount received by him or his predecessors in every year during the period of five years next before the passing of this act, on account of the salary, fees, emoluments, profits, and perquisites in respect whereof he shall claim such compensation, distinguishing the office, place, situation, employment, or appointment in respect whereof the same shall have been received, and containing a declaration that the same is a true statement according to the best of the knowledge, information, and belief of such person, and also setting forth the sum claimed by him as such compensation; and the town clerk or treasurer, as the case shall be, shall lay such statement before the council, who shall take the same into consideration, and determine thereon; and immediately upon such determination being made, the person preferring such claim, if he shall not himself be the town clerk, shall be informed thereof by notice in writing under the hand of the town clerk; and in case such claim shall be admitted in part and disallowed in part, such notice shall specify the particulars in which the same shall have been admitted and disallowed respectively; and in case the person preferring such claim shall think himself aggrieved by the determination of the council thereon, or in case one-third of the members of the council shall subscribe a protest against the amount of compensation allowed by the determination of the council as excessive, it shall be lawful for the person preferring such claim, or any member of the council who shall subscribe such protest, to appeal to the lords commissioners of his Majesty's treasury, who shall thereupon make such order as to them shall seem just; and such order, signed by three or more of such lords commissioners, shall be binding on all parties; provided always, that if the council shall not determine on such claim within six calendar months after the aforesaid statement shall be delivered to the town clerk or treasurer, as the case shall be, such claim shall be considered as admitted: provided also, that it shall not be lawful for any member of the council to subscribe such protest as aforesaid, except within such period of six calendar months: provided also, that the person preferring such claim, if any member of the council shall so require, upon receiving notice in writing signed by the town clerk, unless such person shall himself be town clerk, in which case no such notice shall be requisite, shall from time to time attend at any meeting or adjourned meeting of the council for the investigation of such claim, and then and there upon his oath or solemn affirmation, to be taken or made before the mayor (who is hereby authorized to administer the same), shall answer all such questions as shall be asked by any member of the council, touching the matters set forth in the statement subscribed by such person as aforesaid, and produce all books, papers, and writings in his possession, custody, or power, relating thereto: provided also, that every such officer who shall be continued in or re-appointed to such office under the provisions of this act, and who shall be subsequently removed from such office for any cause other than such misconduct as would warrant removal from any office held during good behaviour, shall be entitled to compensation in like manner as if he had been forthwith removed under the provisions of this act, and had not been continued in or re-appointed to such office."

to deliver statement of claims.

67. "The sum payable to any person as such compensation as aforesaid, shall be secured to such person by bond or obligation under the common seal of the borough, out of whose funds the same shall be payable, in a sufficient penalty conditioned for the payment to such person, his executors, or administrators, or assigns, of such sum, with all arrears

Compensation to be secured by bond under common seal.

Corporations.

5 & 6 Will. 4, c. 76.

thereof (if any) accrued due before the date of such bond; and such bond or obligation shall be prepared and executed at the expense of the borough fund, and delivered to the person entitled to such compensation as soon as conveniently may be after the amount thereof shall have been admitted as aforesaid by the council of the borough; or shall have been determined, in the event of such appeal as aforesaid, by the order of the said lords commissioners."

Reservation of certain pensions and allowances.

68. "All pensions and allowances granted on or before the fifth day of June in this present year by the corporate body named in the said schedules (A.) and (B.) in conjunction with any borough, to any retired officer or servant, or to the widow or child of any officer or servant, and all stipends and allowances which during seven years next before the said fifth day of June have been usually paid and granted to the minister or late minister of any church or chapel, or to the master or usher of any school, or to the governor or master of any hospital within such borough, and all charitable allowances which have been usually paid as aforesaid to the inmates of any almshouses by such corporate body, shall be secured, as soon as conveniently may be after the passing of this act, to every person entitled or accustomed to have and receive the same, by bond or obligation under the common seal of the borough out of whose funds the same shall be payable in a sufficient penalty, conditioned for the payment to such person, his executors and administrators, of such pension, stipend, or allowance, with all arrears thereof (if any) accrued due before the date of such bond; and such bond or obligation shall be prepared and executed at the expense of the borough fund."

All acts of the council to be decided by a majority of councillors present; one third part of the whole number to be a quorum.

69. "All acts whatsoever authorized or required by virtue of this act to be done by the council of such borough, and all questions of adjournment or others that may come before such council, may be done and decided by the majority of the members of the council who shall be present at any meeting held in pursuance of this act, the whole number present at such meeting not being less than one third part of the number of the whole council; and at all such meetings the mayor, if present, shall preside; and the mayor, or, in the absence of the mayor, such alderman, or, in the absence of all the aldermen, such councillor as the members of the council then assembled shall choose to be the chairman of that meeting, shall have a second or casting vote in all cases of equality of votes; and minutes of the proceedings of all such meetings shall be drawn up and fairly entered into a book to be kept for that purpose, and shall be signed by the mayor, alderman, or councillor presiding at such meeting; and the said minutes shall be open to the inspection of any burgess at all reasonable times on payment of a fee of one shilling: provided always, that previous to any meeting of the council held by virtue of this act, a notice of the time and place of such intended meeting shall be given three clear days at least before such meeting, by fixing the said notice on or near the door of the town hall of the borough; and such notice shall be signed by the mayor, who shall have power to call a meeting of the council as often as he shall think proper; and in case the mayor shall refuse to call any such meeting after a requisition for that purpose signed by five members of the council at the least shall have been presented to him, it shall be lawful for the said five members to call a meeting of the council by giving such notice as is hereinbefore required in that behalf, such notice to be signed by the said members instead of the mayor, and stating therein the business proposed to be transacted at such meeting; and in every case a summons to attend the council, specifying the business

Minutes of the proceedings of all meetings to be drawn up (a).

Notice of meetings of council.

(a) The minutes of the meeting of a town council ought to be entered at the meeting, and if they are not, the court will not issue a *mandamus* to command the entering of them. (*Reg.* v. *Evesham* (*Mayor, &c.*), 3 *Nev. & Per.* 351; 8 *Ad. & Ell.* 266).

proposed to be transacted at such meeting, signed by the town clerk, shall be left at the usual place of abode of every member of the council or at the premises in respect of which he is enrolled a burgess, three clear days at least before such meeting; and no business shall be transacted at such meeting other than is specified in the notice: provided always, that there shall be in every borough four quarterly meetings in every year, at which the council shall meet for the transaction of general business, and no notice shall need to be given of the business to be transacted on such quarterly days; and the said quarterly meetings shall be holden at noon on the ninth day of November, or if the ninth day of November shall fall on a Sunday on the day following, and at such hour on such other three days before the first day of November then next following as the council at the quarterly meeting in November shall decide, and the first business transacted at the quarterly meeting in November shall be the election of mayor."

Quarterly meetings of council.

70. "It shall be lawful for the council of any borough to appoint out of their own body, from time to time, such and so many committees, either of a general or special nature, and consisting of such number of persons as they may think fit, for any purposes which, in the discretion of such council, would be better regulated and managed by means of such committees: provided always, that the acts of every such committee shall be submitted to the council for their approval."

Council may appoint committees.

71. "And whereas divers bodies corporate now stand seised or possessed of sundry hereditaments and personal estate, in trust, in whole or in part, for certain charitable trusts, and it is expedient that the administration thereof be kept distinct from that of the public stock and borough fund; be it enacted, that in every borough in which the body corporate, or any one or more of the members of such body corporate, in his or their corporate capacity, now stands or stand solely, or together with any person or persons elected solely by such body corporate, or solely by any particular number, class, or description of members of

Charitable trustees (*a*).

(*a*) Property appropriated by a municipal corporation to the maintenance of lecturers to preach before the corporation, is not property held by the corporation upon a charitable trust, within the meaning of this section. (*Re Oxford Charities*, 3 *Myl. & Cr.* 239). But it is not necessary that a corporation should be possessed of the legal estate of charity lands, to come within this section. (*In the matter of the Charities of the Borough of King's Lynn: In the matter of Framingham's Hospital Charity; In the matter of* 5 & 6 *Will. IV. c.* 76, 3 *Jur.* 402—*C.*); and if property be granted to a corporation, subject to a payment for charitable purposes imposed by the grantor, this falls under the provisions of sect. 71; and sect. 68 applies, not to such property, but to cases where the payment has been made by the gift of the corporation itself. (*Rex* v. *Sankey*, 5 *Ad. & El.* 423). All the estate and interest of the old trustees in the charitable funds vested in them as members of the corporation at the time of the passing of the act, ceased and determined on the 1st of August, 1836; and therefore the new trustees had been properly appointed by the master under an order of the Lord Chancellor, bearing date the 20th of August, 1836. (*Bignold* v. *Springfield*, 8 *Scott*, 101).

New trustees of a charity were appointed under the Municipal Corporation Act. The trustees afterwards presented a petition under the 52 Geo. III. c. 101, stating that it was doubtful whether the legal estate in the charity property was vested in them, and that the town council claimed certain powers adversely to the trustees, and raising several other doubtful and difficult questions relating to the charity:—Held, that the Court had no jurisdiction to decide questions of such a nature upon petition. (*In re Charity of W. Phillips, &c.*, 8 *Sim.* 381). The enactment in this clause does not extend to charities, the property of which is vested in trustees, and of which the old corporations were visitors, and had the nomination of the objects only. (*Att.-Gen.* v. *Newbury Corporation*, 1 *Coop.* 72).

The 1 & 2 Vict. c. 31, contains certain provisions for facilitating the sale of church patronage belonging to municipal corporations.

Corporations.

5 & 6 Will. 4, c. 76.

such body corporate seised or possessed, for any estate or interest whatsoever, of any hereditaments, or any sums of money, chattels, securities for money, or any other personal estate whatsoever, in whole or in part, in trust, or for the benefit of any charitable uses or trusts whatsoever, all the estate, right, interest and title, and all the powers of such body corporate, or of such member or members of such body corporate, in respect of the said uses and trusts, shall continue in the persons who at the time of the passing of this act are such trustees as aforesaid, notwithstanding that they may have ceased to hold any office by virtue of which before the passing of this act they were such trustees, until the first day of August, 1836, or until Parliament shall otherwise order, and shall immediately thereupon utterly cease and determine: provided always, that if any vacancy shall be occasioned among the charitable trustees for any borough before the said first day of August, it shall be lawful for the lord high chancellor or lords commissioners of the great seal for the time being, upon petition in a summary way, to appoint another trustee to supply such vacancy; and every person so appointed a trustee as last aforesaid shall be a trustee until the time at which the person in the room of whom he was chosen, would regularly have ceased to be a trustee, and he shall then cease to be a trustee: provided also, that if Parliament shall not otherwise direct, on or before the said first day of August, 1836, the lord high chancellor or lords commissioners of the great seal shall make such orders as he or they shall see fit for the administration, subject to such charitable uses or trusts as aforesaid, of such trust estates."

Council to act as trustees where corporators were ex officio sole trustees (a).

72. "The body corporate named in the said schedules (A.) and (B.) in conjunction with any borough, shall be trustees for executing, by the council of such borough, the powers and provisions of all acts of Parlia-

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(a) By a local act establishing a court of requests for the borough of B., it was enacted, that the mayor, aldermen, and common councilmen for the time being of the borough, the justices for a certain district, and the ministers of certain parishes, with other persons, should be the commissioners thereof; and that in case of a vacancy in the situation of clerk of the court, the mayor and aldermen of the borough should appoint a successor. A vacancy in the situation of clerk having occurred, the plaintiff and defendant, who were both members of the town council, became candidates. At a meeting of the town council specially summoned for the purpose of electing a clerk, the defendant was first elected by the mayor and aldermen only, after which an election took place before the town council, when the plaintiff was elected. Each of the parties voted for the other at the last election, and the plaintiff, before voting and before the election was completed, tendered his resignation of his place in the council to the mayor in a letter, with fifty pounds as a fine on resignation under sect. 51. No bye-law had then been made declaring the fine on resignation, and the mayor returned the fifty pounds. At a subsequent quarterly meeting of the council, the plaintiff was again elected by the council, no previous notice having been given of the intention to elect a clerk of the court of requests at that meeting: — Held, that the case fell within this section of the act, and that neither sect. 73 nor sect. 8 of the 6 & 7 Will. IV. c. 105, (*post*, 140), applied; that the true construction of sect. 72 was, that the body corporate under this act should be trustees or commissioners for executing by the town council "*the powers and provisions*" of all acts of Parliament of which "powers and provisions" the old body corporate or any of the members thereof in their corporate capacity were sole commissioners or trustees before the election of the town council, and that, as the mayor and aldermen were by the local act sole trustees or commissioners for the purpose of appointing the clerk, their powers devolved upon the town council, and that plaintiff was therefore duly elected at the first meeting:—Held also, that under all the circumstances of the case, the plaintiff's resignation of the office of town councillor was sufficient, but that if it was not, his election to the office of clerk had the effect of vacating his office of town councillor. (*Staniland* v. *Hopkins*, 9 *Mee. & W.* 178. And see *Reg.* v. *Hopkins*, 1 *Ad. & E.* (*New Series*), 161.

ment made before the passing of this act, (other than acts made for securing charitable uses and trusts), and of all trusts (other than charitable uses and trusts) of which the said body corporate, or any of the members thereof in their corporate capacity, was or were sole trustees before the time of the first election of councillors in such borough under this act."

Council to appoint a limited number of councillors to be joint trustees for certain purposes.

73. "In every borough in which the body corporate, or a particular or limited number, class, or description of members of the body corporate, or of persons appointed by the body corporate, was or were before the passing of this act trustees, jointly with other trustees for the execution of any act of Parliament, or of any trust, or in which the body corporate, or any particular or limited number, class, or description of members or nominees of the body corporate, by any statute, charter, bye-law or custom, was or were before the passing of this act lawfully appointed to or exercised any powers, duties, or functions whatsoever not otherwise herein provided for, and the continuance of which is not inconsistent with the provisions of this act, the council of such borough, on the day named in such act as last aforesaid, or in the deed or will by which such trust is created for a new election, nomination, or appointment of trustees, or on which such new election, nomination, or appointment has usually been made, (and if there shall be no such day named or usually observed, then on the first day of January in every year), shall appoint the like number of members of the council, or as near as may be to the like number of members of the council, as there were theretofore members or nominees of such corporate body who in right of their office were such trustees, or charged with the execution of such powers, duties, and functions, in room of the members or nominees of such corporate body ceasing to be trustees, or ceasing to exercise such powers, duties, and functions by virtue of this act, and in every case of extraordinary vacancy among the trustees or persons so appointed by the council, shall forthwith appoint one other member of the council in the room of the person by whom such vacancy has been made, and to hold his trust or office for such time as the person by whom such vacancy has been made would regularly have held it."

Present trustees of certain acts continued for a definite time.

74. "Notwithstanding anything in this act contained, every member of any body corporate who in his corporate capacity, and every nominee of any body corporate, or any particular number, class, or description of members of such body corporate, who at the time of the passing of this act shall be for a definite number of years or other shorter time a trustee of such acts or trusts as last aforesaid, shall continue to be such trustee until the time when he would have ceased to be such trustee if this act had not passed; and if a trustee for an indefinite time, or for life, or for so long as he shall be a member, or of a particular class or description of such body corporate, then until the first day of January in the year 1836, and no longer; and every member of the council appointed under the provisions of this act to be a trustee of such acts or trusts as last aforesaid, shall continue to be such trustee until the time herein provided for the new appointment of a member of the council to be trustee in his room, notwithstanding that he may have ceased to be a member of the council; and in case any particular member or officer of any of the said bodies corporate shall have been appointed by any such act, or by any such trust, deed, or will as last aforesaid, to perform during a definite number of years or other shorter time any specific powers, duties, or functions whatsoever, the person who at the time of the passing of this act shall be the person designated and qualified to perform the same, shall continue to perform the same until the time when he would have ceased to perform the same if this act had not passed; and if appointed for an indefinite time, or for life, or for so long as he shall be a member, or of a particular class or description of such body corporate, then until the first day of January in the year 1836, and no longer: provided nevertheless, that nothing in this act shall be construed to extend to the body corporate of the trustees of the

Trustees not to go out of office by reason of ceasing to be of the council until the time prescribed by the terms of the trust.

Corporations.

5 & 6 Will. 4, c. 76.

Liverpool docks, but that every person who at the time of the passing of this act shall be a trustee of the Liverpool docks, and none other, shall be continued to be such trustee until the first day of November in the year 1836, and no longer; and every such trustee who is appointed to discharge, or in his corporate capacity discharges any powers, duties, or functions whatsoever in respect of the said last-mentioned trust estate, and none other, shall continue to discharge the same as if this act had not passed, until the first day of November, in the year 1836, and no longer."

Powers vested in trustees may be transferred to councillors.

75. "And whereas it may be expedient that the powers now vested in the trustees appointed under sundry acts of Parliament for paving, lighting, cleansing, watching, regulating, supplying with water, and improving certain boroughs, or certain parts thereof, should be transferred to and vested in the councils of such boroughs respectively; be it enacted, that the trustees appointed by virtue of any such act of Parliament as last aforesaid, wherein the trustees, or the persons whose trustees they may be, are not beneficially interested, may, if it shall seem to them expedient, at a meeting to be called for that purpose, transfer in writing under their hands and seals all the powers vested in them as such trustees by any such act or acts of Parliament as aforesaid to the said body corporate of such borough, and the said body corporate of such borough shall thenceforth be trustee for executing by the council of such borough the several powers and provisions of any such act or acts of Parliament, and the members of the council shall have the same powers and be subject to the same duties as if their names had been originally inserted in such act or acts, or as if they had been elected under the provisions of any such act or acts as such trustees respectively: provided always, that no such transfer as aforesaid shall be made of the powers vested by virtue of the acts mentioned in schedule (E.) which relate to the town of Cambridge, without the consent of the chancellor, masters, and scholars of the University of Cambridge."

A watch committee to be appointed, to consist of the mayor and councillors, such committee to appoint constables for the borough

76. "The council to be elected for any borough shall, immediately after their first election, and so from time to time thereafter as they shall deem expedient, appoint for such time as they may think proper, a sufficient number of their own body, who, together with the mayor of the borough for the time being, shall be and be called the watch committee for such borough; and all the powers hereinafter given to such committee may be executed by the majority of those who shall be present at any meeting of such committee, the whole number present at such meeting being not less than three; and such watch committee shall, within three weeks after their first formation, and so from time to time thereafter, as occasion shall require, appoint a sufficient number of fit men, who shall be sworn in before some justice of the peace having jurisdiction within the borough to act as constables for preserving the peace by day and by night, and preventing robberies and other felonies, and apprehending offenders against the peace; and the men so sworn shall not only within such borough, but also within the county in which such borough or part thereof shall be situated, and also within every county being within seven miles of any part of such borough, and also within all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities as any constable duly appointed now has, or hereafter may have within his constablewick, by virtue of the common law of this realm, or of any statutes made, or to be made, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within such borough, or within any county in which they shall be called on to act as constables for conducting themselves in the execution of their office."

Constables to be for the county, &c. as well as borough.

Watch committee to make regulations for the management of the constables.

77. "The watch committee for any such borough as aforesaid may from time to time frame such regulations as they shall deem expedient for preventing neglect or abuse, and for rendering such constables effi-

cient in the discharge of their duties; and the said committee, or any two justices of the peace having jurisdiction within the borough, may at any time suspend or dismiss any constable whom they shall think negligent in the discharge of his duty or otherwise unfit for the same; and when any man shall be so dismissed, or cease to belong to the said constabulary force, all powers vested in him as a constable by virtue of this act shall immediately cease; and no man so dismissed as aforesaid shall be re-appointed without the consent of two of the justices of the peace having jurisdiction within the borough."

Power to constables to apprehend disorderly persons, &c.

78. "It shall be lawful for any constable during the time of his being on duty to apprehend all idle and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of intention to commit a felony, and to deliver any person so apprehended into the custody of the constable appointed under this act, who shall be in attendance at the nearest watch-house, in order that such person may be secured until he can be brought before a justice of the peace, to be dealt with according to law, or may give bail for his appearance before a justice of the peace, if the constable shall think fit to take bail, in the manner hereinafter mentioned."

Constables attending at the watch-houses in the night may take bail by recognisance from persons brought before them for petty misdemeanors; such recognisance to be conditioned for the appearance of the parties before a magistrate.

79. "Where any person charged with any petty misdemeanor shall be brought without the warrant of a justice of the peace into the custody of any constable appointed under this act, during his attendance in the night-time at any watch-house within any such borough as aforesaid, it shall be lawful for such constable, if he shall think fit, to take bail by recognisance, without any fee or reward, from such person, conditioned that such person shall appear for examination within two days before a justice of the peace within the borough at some time and place to be specified in the recognisance; and every recognisance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if the same had been taken before a justice of the peace; and the constable shall enter in a book to be kept for that purpose in every watch-house, the names, residence and occupation of the party, and his surety or sureties, if any, entering into such recognisance, together with the condition thereof, and the sums respectively acknowledged, and shall lay the same before such justice as shall be present at the time and place when and where the party is required to appear; and if the party does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognisance to be drawn up, to be signed by the constable, and shall return the same to the next general or quarter sessions of the peace for the borough, or for the county in which such borough is situate, in those boroughs for which there shall be no separate general or quarter sessions of the peace, with a certificate at the back thereof, signed by such justice, that the party has not complied with the obligation therein contained; and the clerk of the peace shall make the like estreats and schedules of every such recognisance as of recognisances forfeited in the sessions of the peace; and if the party not appearing shall apply by any person on his behalf to postpone the hearing of the charge against him, and the justice shall think fit to consent thereto, the justice shall be at liberty to enlarge the recognisance to such further time as he shall appoint; and when the matter shall be heard and determined, either by the dismissal of the complaint or by binding the party over to answer the matter thereof at the sessions, or otherwise, the recognisance for the appearance of the party before a justice shall be discharged without fee or reward."

In default of appearance, recognisance to be forfeited.

Time of hearing may be postponed.

Penalties on constables for neglect of duty

80. "If any constable of any borough shall be guilty of any neglect of duty or of any disobedience of any lawful order, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence be liable to be imprisoned for any time not exceeding ten days, or to be fined in any sum not exceeding forty shillings, or to be dismissed from his office, as such justices shall in their discretion think meet."

Corporations.

5 & 6 Will. 4, c. 76.

Penalty for assaults on constables.

81. "If any person shall assault or resist any constable of any borough appointed under this act, in the execution of his duty, or shall aid or incite any person so to assault or resist, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay such sum, not exceeding five pounds as the said justices shall think meet: provided always, that nothing herein contained shall prevent any prosecution by way of indictment against any person so offending, but so as that such person shall not be prosecuted by indictment, and also proceeded against under this act for the same offence."

Regulation and payment of expenses.

82. "The treasurer of every borough appointed under this act shall pay to the constables of such borough appointed under this act such salaries, wages, and allowances, and at such periods as the watch committee for such borough shall, subject to the approbation of the council, direct, and the council shall order to be paid also any extraordinary expenses which such persons shall appear to have necessarily incurred in apprehending offenders, and executing the orders of any justice of the peace having jurisdiction within such borough, such expenses having been first examined and approved by such justice; and the said treasurer shall also pay such further sums as the watch committee shall, subject to the approbation of the council, award to any of the persons belonging to the said constabulary force, as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or shall be worn out by length of service, and all other charges and expenses which the watch committee shall, subject to the approbation of the council, direct to be paid for the purposes of the constabulary force under this act."

Rewards for activity, &c.

Magistrates to appoint annually a certain number of persons to act as special constables (a).

83. "Any two or more of the justices of the peace having jurisdiction within any borough are hereby authorized and required in the month of October in every year to nominate and appoint by precept in writing, under their hands, so many as they shall think fit of the inhabitants of such borough (not legally exempt from serving the office of constable) to act as special constables within such borough whensoever they shall be required by the warrant of any of the justices of the peace having jurisdiction within such borough so to act, and not otherwise; and every such warrant shall recite that in the opinion of the justice granting the same, the ordinary police force of the borough is insufficient at that time to maintain the peace of the borough; and every person so appointed a special constable shall take the oath set forth in the act passed in the session of parliament holden in the first and second years of the reign of his present Majesty, intituled 'An Act for Amending the Laws relative to the Appointment of Special Constables, and for the better Preservation of the Peace,' and shall have the powers and immunities and be liable to the duties and penalties enacted by the said last-mentioned act; and every person so appointed a special constable shall receive, out of the borough fund, for every day during which he shall be called out to act as such, the sum of 3*s.* 6*d.*, and no more."

1 & 2 Will. 4, c. 41. Vol. I., tit. "Constables."

Payment of special constables.

On notice of appointment of constables, the present provisions in local act as to watching, &c. to cease.

84. "As soon as constables shall have been appointed by the watch committee for any borough, a notice, signed by the mayor of such borough, specifying the day on which such constables shall begin to act, shall be fixed on the door of the town hall and every church within such borough; and on the day so specified in such notice so much of all acts named in conjunction with such borough in the Schedule (E.) to this act annexed, and of all acts made before the passing of this act, as relates to the appointment, regulation, powers and duties, or to the assessment or collection of any rate to provide for the expenses of any watchmen, constables, patrol or police for any place situated within

(a) *See Vol. I. tit. "Constables."*

such borough, shall cease and determine; and all watch-houses and watch-boxes in any such place, and all arms, accoutrements, and other necessaries provided at the public expense for any watchmen, constables, patrol or police therein, shall be given up to such persons as shall be named by the said mayor in such notice, for the use and accommodation of the constables to be appointed under this act, and all the property so to be given up shall be deemed to belong to the body corporate of such borough; and in case any person having the charge, control or possession of any watch-house, watch-box, arms, accoutrements, or necessaries as aforesaid, shall neglect or refuse to give up the same as hereinbefore required, every such offender, being convicted thereof before any two justices of the peace, shall, for every such offence, forfeit and pay, over and above the value of the property not given up, such sum not exceeding five pounds, as the said justices shall think meet; and where there shall be any building in any such place as aforesaid, a part only of which building shall have been heretofore used as a watch-house, such part shall be given up every day, from the hour of four in the afternoon until the hour of nine in the forenoon, for the use and accommodation of the constables to be appointed under this act; and if any person having the charge, control or possession of any such building, shall neglect or refuse to give up such part thereof for the purposes aforesaid, or to permit free access thereto or egress therefrom during any portion of the time above prescribed, every such offender, being convicted thereof before any two justices of the peace, shall, for every such offence, forfeit and pay such sum not exceeding five pounds as the said justices shall think meet: provided nevertheless, that in every case in which before the passing of this act a rate might be levied in any borough for the purpose of watching, conjointly with any other purpose, nothing in this act contained shall be construed to prevent the levying and collecting of such rate for such other purpose solely, or to repeal the powers given in any act so far as the same relate to such other purpose: provided always, that where the amount of such rate before the passing of this act might not exceed a given rate in the pound on the value of property ratable thereunto, the rate so to be levied for such other purpose solely shall not exceed such proportion of the said given rate in the pound as shall appear to have been expended for such purpose other than watching by an account of the average yearly expenditure during the last seven years, or where such rate shall not have been levied during seven years, then during such less number of years as such rate shall have been levied."

Watch boxes, arms, &c. to be given up for the use of the constables appointed under this act.

Penalty for not giving them up.

85. Provided always, "That any rate for defraying the expenses of any watchmen, constables, patrol, or police, in any such place as aforesaid, made previously to the day specified in such notice as aforesaid, shall be levied and collected in the same manner as if this act had not been passed: provided also, that nothing herein contained shall prevent the levying and collecting of any rate in any such place as aforesaid, for the purpose of paying any debt contracted before the passing of this act, or the interest of any such debt, but that such rate shall and may be levied and collected in the same manner as if this act had not been passed."

Proviso as to rates in arrear, and as to debts.

86. "The watch committee of every such borough shall, on the 1st day of January, the 1st day of April, the 1st day of July, and the 1st day of October in every year, transmit to one of his Majesty's principal secretaries of state a report of the number of men appointed to act as constables or policemen in such borough, and of the description of arms, accoutrements, and clothing, and other necessaries furnished to each man, and of the salaries, wages, and allowances payable to such constables or policemen, and of the number and situation of all station houses in such borough; and also a copy of all rules, orders, and regulations which shall from time to time be made by such watch committee, or by the council of such borough, for the regulation and guidance of such constables or policemen."

Watch committee to transmit a report quarterly to the secretary of state, and also a copy of their rules, &c.

Corporations.

5 & 6 Will. 4, c. 76.

Power for council to order parts of borough not within a local act as to lighting, to be included in such act.

87. "And whereas parts of certain boroughs are within the provisions of one or more local act or acts for regulating the lighting thereof, and certain other parts of the same boroughs are not within the provisions of any local act for regulating the lighting thereof, and for want of such lighting the efficiency of the constables may be much diminished, and great facilities afforded for the commission of crimes, and for the escape of offenders; for remedy thereof, be it enacted, that it shall be lawful for the council of any borough in any part of which there is a local act for the lighting thereof to make an order that any part of such borough not being within the provisions of any local act for the lighting thereof, shall, from and after a certain day to be named in such order, be taken to be within the provisions of such local act or acts for lighting any part of such borough as the common council shall specify in such order; and after such day the part named in such order shall be within the provisions of the act or acts so specified, so far as relates to lighting, or to any rates authorized to be levied for the purpose of lighting, as fully as if such part had been originally named in such act or acts, anything in such act or acts to the contrary notwithstanding: provided always, that every part named in such order shall be lighted in the like manner as those parts which before the making of such order were within the provisions of such local act, and that the rate to be raised for the purpose of defraying the expenses of lighting any part so named in such order shall not exceed the average expense in the pound of the lighting of the other parts of such borough."

Proviso as to amount of rate for lighting

Council may assume the powers of inspectors under 3 & 4 Will. 4, c. 90, for lighting any part of the borough not within a local act for lighting the same (a).

88. "If the council of any borough chosen under this act shall, by public notice to be affixed on the outer door of the town hall, or in some public place within the borough, declare that on a certain day, to be named in such notice, not less than twenty-one days after the day on which such public notice shall have been given, they will take upon themselves the powers given to the inspectors named in a certain act made in the third and fourth year of his present Majesty, intituled, 'An Act to repeal an Act of his late Majesty King George the Fourth, for the Lighting and Watching of Parishes in England and Wales, and to make other provisions in lieu thereof,' so far as the same relates to the lighting the whole or any part of any borough which is not within the provisions of any local act, or in which there is no power of levying rates for lighting the same, the council of such borough shall, after the day named in such notice, have the same powers and duties as belong to inspectors under the said last-recited act in regard to lighting and to levying rates for the purpose of lighting such part of the borough, except so far as the same are contrary to or inconsistent with the provisions of this act; and in such case the council shall have the sole power to fix and determine the amount of money which they will call for in any one year for the purpose of lighting such part of the borough, so that such sum shall not exceed the rate of six-pence in the pound on the full and fair annual value of all property ratable to the relief of the poor within such part of the borough: provided also, that it shall not be lawful in such case for the inhabitants of such part of the borough at any time to determine that the provisions of the said recited act shall cease to be acted upon."

Act not to interfere with the regulations for the government, &c. of dock yards, arsenals, &c.

89. Provided always, "that nothing herein contained shall be construed to interfere with the watching, paving, or lighting, and internal regulations established for the government and security of any of his Majesty's dockyards, victualling establishments, arsenals, and barracks respectively; nor shall any of the tenements within the said dockyards, victualling establishments, arsenals, or barracks, or the inhabitants of the same, be liable to be assessed to the rates for watching, paving, or lighting the other parts of the city, borough, or parish within which the same may be respectively situated, unless such tenements or the in-

(a) *See "Watching &c. of Parishes," Vol. VI.*

habitants thereof are now or may hereafter become liable to be assessed to any such rates made under or by virtue of any law or statute now in force; nor shall any thing herein contained extend to defeat or affect the authority of justices of the peace which by an act passed in the second year of his present Majesty's reign, intituled, 'An Act to amend the Laws relating to the Business of the Civil Departments of the Navy, and to make other Regulations for more effectually carrying on the Duties of the said Departments,' is vested in the commissioners for executing the office of lord high admiral of the United Kingdom, and in the superintendents of the several dockyards, and other naval and victualling establishments, in all places, and in all matters relating to his Majesty's naval service, and to the stores, provisions, ammunition, and accounts thereof."

Corporations.

5 & 6 Will. 4, c. 76.

2 & 3 Will. 4, c. 60.

90. "It shall be lawful for the council of any borough to make such bye-laws as to them shall seem meet for the good rule and government of the borough, and for prevention and suppression of all such nuisances as are not already punishable in a summary manner by virtue of any act in force throughout such borough, and to appoint by such bye-laws such fines as they shall deem necessary for the prevention and suppression of such offences; provided that no fine so to be appointed shall exceed the sum of five pounds, and that no such bye-law shall be made unless at least two-thirds of the whole number of the council shall be present; provided that no such bye-law shall be of any force until the expiration of forty days after the same, or a copy thereof shall have been sent, sealed with the seal of the said borough, to one of his Majesty's principal secretaries of state, and shall have been affixed on the outer door of the town hall, or in some other public place within such borough: and if at any time within the said period of forty days his Majesty, with the advice of his privy council, shall disallow the same bye-law, or any part thereof, such bye-law, or the part thereof disallowed, shall not come into operation: provided also, that it shall be lawful for his Majesty, if he shall think fit, at any time within the said period of forty days, to enlarge the time within which such bye-law, if disallowed, shall not come into force; and no such bye-law shall in that case come into force until after the expiration of such enlarged time."

Council to have power to make bye laws (a).

91. "All the provisions hereinafter contained relative to offences against this act, punishable upon summary conviction, shall be taken to apply to all offences committed in breach of any bye-law or regulation made by virtue of this act."

As to breaches of bye-laws.

92. "After the election of the treasurer in any borough, the rents and profits of all hereditaments, and the interest, dividends, and annual proceeds of all monies, dues, chattels, and valuable securities belonging or payable to any body corporate named in conjunction with the said borough in the said schedules (A.) and (B.), or to any member or officer thereof in his corporate capacity, and every fine or penalty for any offence against this act (the application of which has not been already provided for) shall be paid to the treasurer of such borough; and all the monies which he shall so receive shall be carried by him to the account of a fund to be called 'The Borough Fund;' and such fund, subject to the payment of any lawful debt due from such body corporate to any person, which shall have been contracted before the passing

All corporate property and all fines received to be carried to the account of the borough fund.

Payment of debts, &c., salaries of recorder, town clerk, treasurer, and

(a) As to the power of corporations to make and enforce bye-laws, see *Graves* v. *Colby*, 9 *Ad. & Ell.* 356; *The Poulterers' Company* v. *Phillips*, 8 *Scott*, 593; *S. C.* 6 *Bing. N. C.* 314; *Rex* v. *Johnson*, 5 *Ad. & Ell.* 488; *Rex* v. *Langhorn*, 4 *Ad. & Ell.* 538. Evidence of a practice in contravention of a bye-law is not receivable. (*Sells* v. *Brown*, 9 *C. & P.* 601). A bye-law for a dinner by a corporate company may, it seems, be good, if in aid of a custom, or if it be for some beneficial public purpose, or in furtherance of some general corporate interest. (*The Master, &c. of the Society of Scriveners of London* v. *Brooking*, *N. Law J. R.* (*N. S.*) *Q. B.* 169).

Corporations.

5 & 6 Will. 4, c. 76.

other officers and election expenses, to be paid out of such fund (a).

of this act, and unredeemed, or of so much thereof as the council of such borough from time to time shall be required, or shall deem it expedient, to redeem, and to the payment from time to time of the interest of so much thereof as shall remain unredeemed, and saving all rights, interests, claims, or demands of all persons or bodies corporate in or upon the real or personal estate of any body corporate by virtue of any proceedings either at law or in equity which have been already instituted, or which may be hereafter instituted, or by virtue of any mortgage or otherwise, shall be applied towards the payment of the salary of the mayor, and of the recorder, and of the police magistrate hereinafter mentioned, when there is a recorder or police magistrate, and of the respective salaries of the town clerk and treasurer, and of every other officer whom the council shall appoint, and also toward the payment of the expenses incurred from time to time in preparing and printing burgess lists, ward lists, and notices, and in other matters attending such elections as are herein mentioned, and, in boroughs which shall have a separate court of sessions of the peace as is hereinafter provided, towards the expenses of the prosecution, maintenance, and punishment of offenders, and towards such other sum to be paid by such borough to the treasurer of such county as is hereinafter provided, and towards the expense of maintaining the borough gaol, house of correction, and corporate buildings, and towards the payment of the constables, and of all other expenses not herein otherwise provided for which shall be necessarily incurred in carrying into effect the provisions of this act; and in case the borough fund shall be more than sufficient for the purposes aforesaid, the surplus thereof shall be applied, under the direction of the council, for the public benefit of the inhabitants and improvement of the borough; provided that it shall not be lawful for the council to be elected under the provisions of this act, in any borough in which the body corporate named in conjunction with the said borough in the said Schedules (A.) and (B.), before the time of the passing of this act shall have contracted any lawful debt chargeable on any tolls or dues belonging or payable to the said body corporate, or to any member or officer thereof in his corporate capacity, or towards the satisfaction whereof such tolls or dues, or any part thereof, were applicable before the passing of this act, to alter or reduce the amount to be levied and payable of such tolls or dues, or to grant for any consideration any remission of or exemption from such tolls or dues, or any part thereof, unless with the consent in writing under the hands of a majority in number and amount of the creditors to whom such debt is due, until after such debt

Application of surplus.

(a) The costs of defending *quo warranto* informations against an alderman of a borough, and of prosecuting a criminal information against a person for assaulting a justice, are not payable out of the borough fund. (*Reg.* v. *Bridgewater* (*Council*), 2 *Per. & D.* 558; 10 *Ad. & E.* 281). But a municipal corporation is justified in discharging out of the corporate funds the expenses of defending *quo warranto* informations against individual members, if the object of such informations be to impeach the title, or destroy the legal existence of the corporation as a body. And therefore, where, before the Municipal Corporation Act, an individual member had incurred costs and charges in defending *quo warranto* informations against himself and others, without authority from them, and afterwards obtained a bond, with the corporate seal affixed, for the reimbursement of those costs and charges.—it was held, that there was a lawful debt existing before the act, and that it was saved by the 92nd section of the 5 & 6 Will. IV. c. 76. (*Holdsworth* v. *Dartmouth* (*Mayor*), 10 *Ad & Ell.* 490: *S. P. Att.-Gen.* v. *Norwich* (*Mayor*), 2 *Myl. & Cr.* 406). Where persons intrusted with the administration of a fund have incurred proper expenses in performing duties thrown upon them by their fiduciary situation, they have a right in law and in equity to reimburse themselves out of the funds in their hands without any special provision. (*Ib.*) And see *Att.-Gen.* v. *Norwich* (*Corporation*), 1 *Kee.* 700. And see as to the administration of the borough fund, 6 & 7 Will. IV. c. 104, *post*, 137.

and all arrears of interest due thereon shall have been fully paid and satisfied; and in case the borough fund shall not be sufficient for the purposes aforesaid, the council of the borough is hereby authorized and required from time to time to estimate, as correctly as may be, what amount, in addition to such fund, will be sufficient for the payment of the expenses to be incurred in carrying into effect the provisions of this act; and in order to raise the amount so estimated, the said council is hereby authorized and required from time to time to order a borough rate in the nature of a county rate to be made within their borough, and for that purpose the council of such borough shall have within their borough all the powers which any justices of the peace assembled at their general or quarter sessions in any county in England have within the limits of their commission by virtue of an act made in the fifty-fifth year of his late Majesty King George the Third, intituled, 'An Act to amend an Act of his late Majesty King George the Second, for the more easy assessing, collecting, and levying of county rates,' or as near thereto as the nature of the case will admit, except as is hereinafter excepted; and all warrants required by the said act to be issued under the hands and seals of two or more justices shall in like case be signed by the mayor (*b*), and sealed with the seal of the borough; provided that such council shall not be empowered to receive, hear, or determine any appeal against any such rate; and if any person shall think himself aggrieved by any such rate, it shall be lawful for him to appeal to the

5 & 6 Will 4, c 76.

If the fund be insufficient, the council shall order a rate to make up the deficiency,

in the nature of a county rate.

55 Geo. 3, c. 51 (*a*).

Appeal (*c*).

(*a*) *See post*, "*County Rate.*"

(*b*) The 6 & 7 Will. IV. c. 104, s. 5, *post*, enables the mayor to issue his warrant for levying the rate to be directed to the high constable of the borough, or other officer or person appointed by the council for collecting the rate.

(*c*) The power of appeal against a borough rate is confined to the grounds of appeal against a county rate, under 55 Geo. III. c. 51, s. 14, and therefore an individual cannot appeal for any personal grievance, or on the ground of the rate being retrospective. (*Reg.* v. *Bath* (*Recorder*,) 1 *Per.* & *D.* 622; 9 *Ad.* & *Ell.* 871). The appeal is given exclusively to the public officer of the district or division, the churchwarden or overseer. When the word "inhabitant" is used, it is not to be understood as being applicable to *any* individual, but to such only as, for for the purpose of appeal, represents some place where the clause supposes neither churchwarden nor overseer to exist; and who must, therefore, be understood to be placed upon the same footing as churchwardens and overseers. (Per *Denman*, C. J., delivering the judgment of the Court of Queen's Bench, 9 *Ad.* & *Ell.* 878). Notice of the appeal to the town clerk is sufficient, as he is the officer of the town council, who made the rate. (*Reg.* v. *Carmarthen*, 3 *Nev.* & *Per.* 19; 7 *Ad.* & *Ell.* 758). The notice must state directly that the party appealing is aggrieved, or must shew facts from which it can be collected. And on an appeal against a borough rate, no notice being proved, except as before mentioned, the recorder refused to hear the appeal, or to enter and respite. The court refused a *mandamus* to compel him to hear it; though it was stated on affidavit that the appellant was a party aggrieved, and that the omission in the notice arose from oversight. (*Rex* v. *Bond*, 6 *Ad.* & *Ell.* 905).

Where an appeal against a borough rate was, at the request of the town clerk, adjourned from the Epiphany to the Michaelmas sessions, but in the meantime the rate was abandoned: it was held, that the recorder ought to have heard the appeal, although there was no rate produced, and no secondary evidence of it given. (*Rex* v. *Stamford* (*Recorder*), 1 *Per.* & *D.* 72) As to an information seeking to invalidate a borough rate, see *Att.-Gen.* v. *Corporation of Poole*, 2 *Kee.* 190. *See* "*Appeal*," *Vol. I.*).

The effect of sect. 132, (*post*, 119), is to take away certiorari in the case of an order of borough sessions quashing an appeal against a rate made under this section. (*Reg.* v. *Rippon*, (*JJ.*), 7 *Ad.* & *Ell.* 417) But this is now remedied by 7 Will. 4 & 1 Vict. c. 78, s. 44, (*post*, 133), which grants a certiorari to remove any order for the payment of money out of the borough fund, and which enactment is retrospective. (*Reg.* v. *Bridgewater*, (*Council*), 10 *Ad.* & *Ell.* 281).

5 & 6 Will. 4, c. 76.

Sums levied to be paid to account of borough fund.

recorder hereinafter mentioned at the next quarter sessions for the borough in which such rate has been made, or in case there shall be no recorder within such borough, to the justices at the next court of quarter sessions for the county within which such borough is situate or whereunto it is adjacent; and such recorder or justices respectively shall have power to hear and determine the same, and to award relief in the premises, as in the case of an appeal against any county rate; and all such sums levied in pursuance of such borough rate shall be paid over to the account of the borough fund, and, subject to the provisions hereinbefore contained, shall be applied to all purposes to which, before the passing of this act, a borough rate or county rate was by law applicable in such borough or county: provided that in every case in which before the passing of this act any rate might be levied in any borough, or in any parish or place made part of any borough under the provisions of this act, for the purpose of watching solely by day or by night, or for the purpose of watching by day or by night conjointly with any other purpose, it shall be lawful for the council of such borough to levy

Watch rate (a).

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2 & 3 Vict. c. 28.

5 & 6 Will 4. c. 76.

Watch rate may be levied not exceeding 6d. in the pound, or in certain cases the average rate.

(a) By stat. 2 & 3 Vict. c. 28, intituled "An Act for more equally assessing and levying Watch Rates in certain Boroughs," [19th July, 1839], reciting "Whereas by reason of the restrictions contained in an act passed in the sixth year of the reign of his late Majesty, intituled 'An Act to provide for the Regulation of Municipal Corporations in England and Wales, the Watch Rate authorized by the said Act to be levied upon those parts of the Boroughs within the provisions of the said Act which are regularly watched is insufficient for that purpose, and the deficiency in many cases is paid out of the Borough Rate, to which all parts of the Borough, whether or not regularly watched, are liable:' for remedy thereof, be it enacted, that after the passing of this act it shall be lawful for the council of any borough named in either of the schedules to the said act to levy a watch rate upon the occupiers of all messuages, lands, tenements, and hereditaments within those parts of the borough which shall be watched by day and by night, and which from time to time, by any order of the council of any such borough, shall be declared liable to such watch rate; and every such rate shall be made upon an estimate of the net annual value of the several hereditaments rated thereunto, that is to say, of the rent at which, one year with another, the same might in their actual state be reasonably expected to let from year to year, the probable annual average cost of the repairs, insurances, and other expenses (if any) necessary to maintain the hereditaments in their actual state, and all rates, taxes, and public charges, except tithes or tithe commutation rent-charges (if any), being paid by the tenant, and either by one rate made yearly, or by two or more rates made half-yearly, or otherwise: provided always, that no such rate shall exceed, in any one year, the rate of sixpence in the pound on the net annual value of the hereditaments rated thereunto, unless in those boroughs in which, at the time of passing the said act, the sum authorized by the said act to be levied by way of watch rate exceeded the sum which might have been then raised by the said rate of sixpence in the pound; and in such cases as last aforesaid it shall be lawful to levy a watch rate under this act upon all the hereditaments liable thereunto, at such rate as would have sufficed to raise such greater sum: provided also, that nothing herein contained shall be construed to extend to either of the Universities, so as to make the members thereof liable to pay to any rate to be made in pursuance of this act to which the said Universities or the members thereof were not liable to contribute before the passing of this act, nor shall be deemed to affect the liability of the borough fund to make good any deficiency of the watch rate towards the expenses of the police, should any such deficiency arise, nor to make liable to the watch rate any lands, tenements, or hereditaments which are now exempted by any local act from the payment of watch rates, or to alter the comparative liability of any lands, tenements, or hereditaments to the watch rate, which by any local act are now, in respect of any watch rate, entitled to any deduction from or chargeable with any increase upon an equal pound rate; but the like comparative deductions and increased charges shall be made in respect of such hereditaments in the rates to which such hereditaments shall be rated under this act."

a watch rate sufficient to raise any sum not greater than the average yearly sum which during the last seven years, or where such rate shall 5 & 6 Will. 4, c. 76.

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2. "That for the purposes aforesaid the council of every such borough, and all other persons interested or concerned therein, shall have all the powers heretofore given to them respectively, in the matter of the borough rate and watch rate or either of them, by the said act or by any other subsequent act, for ordering, making, assessing, levying, raising, collecting, or paying the same, or as near thereto as the nature of the case will admit." As to the powers of the council of any borough. 2 & 3 Vict. c. 28.

And by stat. 3 & 4 Vict. c. 28, [23rd July, 1840], intituled "An Act to explain and amend an Act of the second and third Years of her present Majesty, for more equally assessing and levying Watch Rates in certain Boroughs," reciting, "Whereas by an act passed in the session of parliament holden in the second and third years of the reign of her present Majesty, intituled 'An Act for more equally assessing and levying Watch Rates in certain Boroughs,' after reciting therein that by reason of the restrictions contained in an Act passed in the sixth year of the reign of his late Majesty King William the Fourth, intituled 'An Act to provide for the Regulation of Municipal Corporations in England and Wales,' the watch rate authorized to be levied upon those parts of the boroughs within the provisions of the said act which were regularly watched was insufficient for that purpose, and the deficiency in many cases was paid out of the borough rate to which all parts of the borough, whether or not regularly watched, were liable; for remedy thereof it was enacted, amongst other things, that it should be lawful for the council of any borough named in either of the schedules to the said act of his late Majesty to levy a watch rate upon the occupiers of all messuages, lands, tenements, and hereditaments within those parts of the borough which should be watched by day and by night, and which from time to time, by any order of the council of any such borough, should be declared liable to such watch rate, provided that no such rate should exceed in any one year the rate of sixpence in the pound on the net annual value of the hereditaments rated thereunto, unless in those boroughs in which at the time of passing the said act of his late Majesty the sum authorized to be levied by way of watch rate exceeded the sum which might have been then raised by the said rate of sixpence in the pound: and whereas the said act of her present Majesty was intended to apply to boroughs in which, from the deficiency of the borough fund, it had become or might become necessary that borough rates should be laid; but doubts have been entertained whether the same act may not apply to cases of municipal boroughs in which there are borough funds sufficient for the purposes of defraying the expenses of the constabulary force of such boroughs, together with all other expenses payable out of the borough fund, with the aid of the amount only of watch rate which could be raised under the provisions of the said act of his said late Majesty, and without the aid of any borough rate; and doubts are also entertained whether by the said act of her present Majesty it is not imperative upon the council of each borough to levy in each borough a watch rate to the extent of sixpence in the pound; and in order to remove such doubts, it was declared, that after the passing of this act the said act of her present Majesty shall not apply or be deemed to apply to any borough in which the borough fund is sufficient, with the aid of the amount only of watch rate which could be raised under the provisions of the said act of his late Majesty and without the aid of any borough rate, to defray the expense of the constabulary force of the borough, together with all the other expenses legally payable out of the borough fund, by virtue of the said act of his late Majesty, or any other act or acts of parliament: provided always, that nothing in this act contained shall be deemed to take away or lessen, or to vary or affect, the particular benefit or rights to common lands and public stock, and to lands, tenements, and hereditaments, and to the rents and profits thereof, or to any sum or sums of money, chattels, securities for money, or other personal estate which are reserved by the said recited act of his late Majesty to every person who then was or thereafter might be an inhabitant of any borough, and also to every person who had been admitted, or who might thereafter have been admitted, a freeman or burgess of any borough if that act had not been passed, or who then was or thereafter might be the wife or widow, or son or daughter, of any freeman or burgess, or who had espoused or might thereafter espouse the daughter or widow of any freeman or

3 & 4 Vict. c. 28.
2 & 3 Vict. c. 28.
5 & 6 Will. 4, c. 76.
Recited act not to apply to boroughs in certain c
Proviso.

5 & 6 Will. 4, c. 76. not have been levied during seven years, then during such less number of years as such rate shall have been levied, shall have been expended in the maintenance and establishment of watchmen, constables, patrols, or policemen within the district in which such rate was levied, and for that purpose the council shall have all the powers hereinbefore given to the council in the matter of the borough rate; and where any part of any borough shall not at the time of the passing of this act be within the provisions of the act authorizing the levy of such rate for watching as aforesaid, it shall be lawful for the council from time to time to order that such part, or so much thereof as to the council shall seem fit, shall be rated to the watch rate in like manner as other parts of the borough to be specified in such order, and such watch rate thereupon shall be levied within the part mentioned in such order in like manner as in the other parts of the borough so specified, and all such sums levied in pursuance of such watch rate shall be paid over to the account of the borough fund: provided always, that no such order as last aforesaid shall be made for rating to such watch rate any part of any borough in which at the time of passing this act such rate as aforesaid shall not be levied, and which is more than two hundred yards distant from any street or continuous line of houses which shall be regularly watched within the borough under the provisions of this act: provided also, that nothing in this act contained shall be construed to render liable to the payment of any debt contracted before the passing of this act by any body corporate, any part of the real or personal estate of the said body corporate which before the passing of this act was not liable thereto, or to authorize the levy of any rate within any part of any borough for the purpose of paying any debt contracted before the passing of this act, which before the passing of this act could not lawfully be levied therein towards the payment of the same."

It having been decided that this section did not authorize the council to make a rate to satisfy by-gone expenses, (*Woods* v. *Reed*, 2 *Mee. & Wels.* 777); and it being doubtful whether the words were sufficiently comprehensive to extend to borough rates, the provisions which the 55 Geo. III. c. 51, had made with respect to county rates, the 7 Will. IV. & 1 Vict. c. 81, (17th July, 1837), intituled, "An Act to provide for the levying of rates in boroughs and towns having municipal corporations in England and Wales," was passed, which after reciting, that "by an act passed in the sixth year of the reign of his late Majesty, intituled, 'An Act to provide for the regulation of municipal corporations in England and Wales,' authority was given to the council of any borough in certain cases to levy a borough rate, and in certain other cases to levy a watch rate, and the same powers and authorities were thereby given to them for that purpose as by law are given to justices of the peace at sessions with respect to a county rate: and whereas no authority was thereby given to the churchwardens or overseers of the poor of any parish or place, or other persons, who may thereby be legally ordered to pay or levy such rate, to pay the same out of the poor rate of such respective parishes or places, or otherwise to levy the same upon the inhabitants thereof:" enacted, "that in all cases where by the said act or by this act a borough rate or watch rate may be made and

7 Will. 4 and 1 Vict. c. 81.

6 Will. 4, c. 76.

Payment of watch

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3 & 4 Vict. c. 88. burgess, or who had been or might thereafter be bound an apprentice: Provided also, that nothing herein contained shall render the borough fund of any borough liable to any expenses with which such borough fund was not chargeable before the passing of the said recited act of her present Majesty."

Limiting amount of watch rate to be annually levied.

2. "And it was declared, that the amount of watch rate to be levied by the council of any borough under the authority of the said recited act of her present Majesty shall be at the discretion of each such council, but not exceeding in any one year the sum of sixpence in the pound, as limited by the same act."

levied in any borough, the council of such borough may order the churchwardens and overseers of every parish or place within which such rate may be levied, or such other persons as by law may make a poor rate for any such parish or place within the limits of such borough, to pay the amount of such part and portion of such rate for which such parish or place respectively shall be liable out of the poor rate made and collected or to be made or collected for such parish or place; or the said council, instead of ordering such churchwardens and overseers or other persons to pay the same out of the poor rate, may order them to make and collect a certain pound rate upon and from the occupiers or possessors of all rateable property within which such parish or place, for the amount of the rate for which such parish or place may be liable as aforesaid; and if such churchwardens, overseers, and other persons, upon being so ordered to pay such rate out of the poor rate, or to make and collect a pound rate as aforesaid, shall refuse or neglect to do so, the amount thereof may be made and levied off the goods of them or any of them by distress by virtue of a warrant in that behalf under the hand and seal of the mayor of such borough, or of any two justices of the peace in and for the same; or if any person liable to pay such pound rate shall neglect or refuse to pay the same, the amount thereof may be levied upon his goods by distress in like manner."

7 Will. 4 & 1 Vict. c. 81.

2. "That it shall be lawful for the council of any borough, at any time within six calendar months next after the passing of this act, to make and levy a borough rate for the purpose of defraying any expenses incurred before the passing of this act in putting in execution the provisions of the said act for regulating corporations; and every such rate shall be made, levied, and recovered in the manner provided by the said act for regulating corporations and by this act." (As to the rates made under this section, *see Reg.* v. *Ipswich* (*Recorder*), 8 *Dowl.* 103).

Council of borough empowered to levy a rate for carrying former act into execution.

3. "Provided always, That in every case in which any parish or place liable to support its own poor shall be partly within and partly without any such borough, and in the case of every extra-parochial place wholly or partly within any such borough, the council of the borough shall appoint one or more proper person or persons to act as overseer or overseers within that part of such parish or any such place which is within the borough, for making, levying, and collecting any such borough rate or watch rate therein; and in every such case of a divided parish or place, if the borough is not liable to the county rate, the justices of the peace having jurisdiction over that part of such parish or place which is not within the borough shall appoint one or more proper person or persons to act as overseer or overseers within that part of such parish or place which is not within the borough, for making, levying, and collecting the county rate therein; and the person or persons so respectively to be appointed shall have the like powers vested in him or them, and shall be subject to the same regulations and penalties, for levying and collecting any such borough rate, watch rate, or county rate within that part of such parish or place for which he or they is or are appointed, as if he or they was or were appointed overseer or overseers of the poor under any law or laws now or hereafter to be in force." (*And see* 7 *Will. IV.* & 1 *Vict. c.* 78, *s.* 29, *post*, 129).

Regulating the collection of borough and county rates in divided places.

The object of this enactment is further explained by *Tindal*, (C. J.), delivering the judgment of the Court of Common Pleas, in *Fernley* v. *Worthington*, 1 *Scott, N. R.*, p. 448.—"It is to be observed," says his Lordship, "that there are three distinct powers given by the 12th section of the 55th Geo. III. c. 51; first, the power to the justices in sessions to make the rate and issue warrants for its collection by the high constable; secondly, the power given to the justices out of sessions to issue a warrant for the levy of the rate upon the goods of any overseer, &c., refusing to pay the assessment to the high constable; thirdly, the power to the overseers or persons appointed to act as such, to levy by

7 Will. 4 & 1 Vict. c. 81.

rate the sums assessed, or to reimburse themselves by a special rate, such sums as they shall have paid on account of the county rate. Now the 92nd section of the Municipal Corporation Act, though it gives the same powers to the council to make the rate, and confers upon the mayor the power of levying by distress the assessment upon the overseers and other collectors of rates, makes no express provision authorizing the overseers of the poor to pay such assessments out of the poor rate, or to make any special rate to reimburse themselves the amount paid over to the borough rate. And doubts having arisen, whether, in the absence of any such express provision, the overseers would be justified in so applying the rates in their hands, or in levying a special rate to reimburse themselves according to the provisions of the county rate act, the statute of 7 Will. IV. & 1 Vict. c. 81 was passed, the first section of which act, after reciting that no authority was given by the 5 & 6 of Will. IV., c. 76, to the churchwardens, overseers, or other persons who might thereby be legally ordered to pay or levy such rates to pay the same out of the poor-rate of such parishes or places, or otherwise to levy the same upon the inhabitants thereof, authorizes the council to order the overseers to pay the assessment of the borough rate out of the poor-rate, or to make and collect a pound rate for the purpose. And then inasmuch as this provision would not apply to extra-parochial places, or to parishes or townships partly within and partly without the borough, the third section expressly provided for such cases: and thus the omissions in the Municipal Corporation Act with respect to the borough rate are completely supplied, and the borough rate and county rate are placed on the same footing for the future in respect of extra-parochial places and divided parishes."

Accounts of receipts and disbursements to be kept, audited, and published (a).

By the 5 & 6 Will. 4, c. 76, s. 93, "The treasurer of every borough shall, in books to be kept for that purpose, enter true accounts of all sums of money by him received and paid, and of the several matters for which such sums shall have been received and paid, and the books containing the accounts shall at all seasonable times be open to the inspection of any of the aldermen or councillors of such borough; and all the accounts, with all vouchers and papers relating thereto, shall in the months of March and September in every year be submitted by the treasurer of the borough to the auditors herein-before provided to be elected, and to such member of the council as the mayor shall name, on the 1st day of March in every year, or in case of extraordinary vacancy within ten days next after such vacancy, for the purpose of being examined and audited, from the 1st day of September in the year preceding to the 1st day of March, and from the first day of March to the 1st day of September in the year in which the said auditors were elected and named, and if the said accounts shall be found to be correct, the auditors shall sign the same; and after such accounts shall have been so examined and audited in the month of September in every year, the treasurer shall make out in writing, and shall cause to be printed, a full abstract of his accounts for the year, and a copy thereof shall be open to the inspection of all the rate-payers of such borough, and copies thereof shall be delivered to all rate-payers of such borough applying for the same, on payment of a reasonable price for each copy."

Power of sale and leasing restrained.

94. "It shall not be lawful for the council of any body corporate to be elected under this act, to sell, mortgage, or alienate the lands, tenements, or hereditaments of the said body corporate, or any part thereof, except in pursuance of some covenant, contract, or agreement, *bonâ fide* made or entered into, on or before the 5th day of June in this

(a) By 6 & 7 Will. IV. c. 104, s. 10, *post*, 139, accounts of corporations are to be transmitted to the secretary of state, and abstracts laid before Parliament.

present year, by or on behalf of the body corporate of any borough, or of some resolution duly entered in the corporation books of such body corporate on or before the said 5th day of June, or to demise or lease except in pursuance of some covenant, contract, or agreement, *bonâ fide* made or entered into on or before the said 5th day of June, by or on the behalf of such body corporate, or in pursuance of some resolutions duly entered in the corporation books of such body corporate on or before the said 5th day of June, or except in the cases hereinafter mentioned, any lands, tenements, or hereditaments of such body corporate or any part thereof, or to enter into any new covenant, contract, or agreement (except in the cases hereinafter mentioned), for demising or leasing any such lands, tenements, or hereditaments, or any part thereof, for any term exceeding thirty-one years, from the time when such lease shall be made, or if made in pursuance of a previous agreement, then from the time when such agreement shall have been entered into; and in every lease which the said council is not hereby restrained from making there shall (except in the cases hereinafter mentioned) be reserved and made payable during the whole of the term thereby granted such clear yearly rent as to the council shall appear reasonable, without taking any fine for the same: provided nevertheless, that in every case in which such council shall deem it expedient to sell and alienate, or to demise and lease for a longer term than thirty-one years, or upon different terms and conditions than those herein-before mentioned, any of the said lands, tenements, or hereditaments, it shall be lawful for such council to represent the circumstances of the case to the lords commissioners of his Majesty's treasury; and it shall be lawful for such council, with the approbation of the said lords commissioners, or any three of them, to sell, alienate, and demise any of the lands, tenements, and hereditaments of the said body corporate, in such manner and on such terms and conditions as shall have been approved by the said lords commissioners: provided always, that notice of the intention of the council to make such application as aforesaid shall be fixed on the outer door of the town hall, or in some public and conspicuous place within the borough, one calendar month at least before such application; and a copy of the memorial intended to be sent to the said lords commissioners shall be kept in the town clerk's office during such calendar month, and shall be freely open to the inspection of every burgess at all reasonable hours during the same."

5 & 6 Will. 4, c. 76.

95. Provided always, "that in all cases in which any body corporate shall on the 5th day of June in this present year have been bound or engaged by any covenant or agreement, express or implied, or have been enjoined by any deed, will, or other document, or have been sanctioned or warranted by ancient usage, or by custom or practice, to make any renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, and years determinable after the lapse of any number of years, at a fine certain, or under any special or specific terms or conditions, and also in all cases in which any body corporate shall theretofore have ordinarily made renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or upon the dropping of any life or lives, upon the payment of an arbitrary fine, it shall be lawful for the council of such borough to renew such lease for such term or number of years, either absolutely or determinable with any life or lives, or for such life or lives, and at such rent, and upon the payment of such fine or premium, either certain or arbitrary, and with or without any covenant for the future renewal thereof, as such body corporate could or might have done in case this act had not been passed."

The council of any borough under this act authorized to renew leases, &c.

96. Provided nevertheless, "that in any of the instances hereinafter mentioned, it shall be lawful for the council from time to time to

Leases of certain buildings, and of

5 & 6 Will. 4, c. 76.

ground for building on or for making gardens, &c. may be made for seventy-five years.

demise and lease, or to enter into any contract or agreement for demising and leasing any of the said lands, tenements, or hereditaments, to any person, body politic, corporate or collegiate, for any term not exceeding seventy-five years from the time of making such lease or agreement; (that is to say), of tenements or hereditaments the greater part of the yearly value of which shall at the time of making the lease or agreement consist of any building or buildings, of land or ground proper for the erection of any houses or other buildings thereupon, with or without gardens, yards, curtilages, or other appurtenances to be used therewith, and, where the lessee or intended lessee shall covenant or agree to erect a building or buildings thereon of greater yearly value than such land or ground, of land or ground proper for gardens, yards, curtilages, or other appurtenances to be used with any other house or other building erected or to be erected on any such ground, belonging either to such body corporate or to any other proprietor, or proper for any other purpose calculated to afford convenience or accommodation to the occupiers of any such house or building."

Collusive purchases, sales, and demises of corporate property since the 5th June, 1835, for undue consideration, may be set aside (a).

97. "It shall be lawful for the council first to be elected in any borough under the provisions of this act, to call in question all purchases, sales, leases, and demises not made in pursuance of some such *bonâ fide* covenant, contract, agreement, or resolution made or entered into as aforesaid before the said 5th day of June, and all contracts for the purchase, sale, lease, or demise of any lands, tenements, and hereditaments, and all divisions and appropriations of the monies, goods, and valuable securities, or any part of the real or personal estate, of which on or before the 5th day of June in this present year, the body corporate of which they are the council, whether in their own right or as trustees for charitable or other purposes, was seised or possessed, which shall have been made or contracted between the said 5th day of June and the day of the declaration of their election; and for that purpose, if it shall appear to the said council that there is ground for believing that any such purchase, sale, lease, or demise, or such contract, or such division or appropriation of the premises, was collusively made for no consideration, or for an inadequate consideration, it shall be lawful for the council of such borough, at any time within six calendar months next after the first election of councillors under this act shall have been declared in such borough, upon notice of their intention being first given in the London Gazette, and also affixed on the outer door of the town hall or in some public place within the borough, to cause the

(a) The Court of Chancery still has jurisdiction to relieve against collusive alienation of corporate property, notwithstanding the remedy provided by this section; but as by this act corporate property is applicable to public purposes, the attorney-general must sue in such cases in conjunction with the corporation. The Municipal Corporation Act has not destroyed the individuality of the old corporations, but has merely varied the mode in which the officers are to be chosen. If some of the members of a corporation are instrumental in unlawfully dispossessing the corporation of its property, they are personally liable. (*Att.-Gen.* v. *Wilson*, 9 *Sim.* 30). The funds, &c. belonging to the municipal corporations of boroughs named in schedules A. and B., became, upon the passing of this act, subject to certain public trusts to be exercised by the new council, only in the manner and for the purposes prescribed by the act. An appropriation of such funds made by the old corporation after the passing of the act, but before the election of the new council, and having for its object to endow the churches and chapels of the established church within the borough, with fixed stipends for their several ministers, is not an appropriation warranted by the act, and is therefore a breach of trust. The ordinary jurisdiction of the court over such a transaction by means of an information seeking to have the funds recalled and the appropriation rescinded as being a breach of trust, is not ousted by the special remedies provided in certain cases by the 97th section of the act. And, *semble*, those remedies would not be applicable in any case to a transaction of the above description. (*Att.-Gen.* v. *Aspinall*, 2 *Myl. & Cr.* 613).

value of the lands, tenements, hereditaments, and premises in question to be inquired of and found by a jury of twelve indifferent men of the county in which, or adjoining to which, in the case of Berwick-upon-Tweed, and of all counties of cities and towns corporate, such lands, tenements, hereditaments, or premises do lie; and in order thereto the said council is empowered to summon and call before such jury all persons having the custody and possession of any deed or agreement concerning the said lands, tenements, hereditaments, and premises made or entered into since the said 5th day of June, and to cause all such deeds and agreements to be produced before the said jury, and examined by them, and to examine upon oath every person who shall be thought necessary to be examined (which oath the mayor is hereby empowered to administer); and the council shall, by ordering a view or otherwise, use all lawful means for the information as well of themselves as of the said jury in the premises; and the jury shall find the value of the said lands, tenements, hereditaments, and premises, and the consideration which shall have been given, and also that which ought of right to have been given, for the purchase, sale, lease, demise, or appropriation thereof, according to the terms of such purchase, sale, lease, demise, contract, or appropriation, and taking into account all the circumstances under which the same shall have taken place; and if the jury by their oaths shall find that no consideration, or a consideration less than that which they shall have so found to be the value which ought therefore to have been given, shall have been collusively given or contracted to be given by the terms of any such purchase, sale, lease, demise, contract, or appropriation, the party to such purchase, sale, lease, demise, contract, or appropriation shall have his option either to re-convey and restore the lands, tenements, hereditaments, and premises in question, and to abandon the contract to which he shall have been party, upon receipt in each case of the consideration, if any, which he shall have given, for the same, or to give therefore in each case such additional consideration, so that the whole consideration given shall be that which ought of right to have been given, so found by the jury as aforesaid; and in every such case as last aforesaid, the additional consideration given or to be given shall be indorsed on the original deed or conveyance; and unless he shall so do within one calendar month next after the finding of the jury, every such purchase, sale, lease, demise, contract, and conveyance shall be absolutely void and of none effect as against the said body corporate and their successors; and in every case in which any such contract shall have been abandoned as aforesaid, or in which any such purchase, sale, lease, demise, contract, or conveyance shall become void and of none effect, under the provisions of this act, the party who would otherwise have had the benefit of the same shall be remitted to his former estate, title, and interest (if any), in the premises, as if no such contract, purchase, sale, lease, or demise had been made or entered into; and for summoning and returning such juries, and for imposing fines on the sheriff, his deputy, bailiff, or agent, and on the persons summoned and returned on the said jury, and on any person required to give evidence who shall in this behalf contravene the provisions of this act, the council of every such borough shall have all the powers given in that behalf to the trustees or commissioners of any turnpike road, by an act made in the third year of his late Majesty George*, intituled 'An Act to amend the General Laws now in being for regulating Turnpike Roads in that part of Great Britain called England;' and all the costs of the said jury, and of all witnesses tendered by the said council to be examined before the said jury, shall in every case be borne by the council, and paid out of the borough fund: provided nevertheless, that it shall be lawful for his Majesty, if he shall think fit, by the advice of his privy council, upon petition to him setting forth the special circumstances under which any purchase, sale, lease, demise, contract, or ap-

5 & 6 Will. 4, c. 76.

* Sic.

3 Geo. 4, c. 126 (a).

(a) See "Highways, Turnpike," Vol. III.

5 & 6 Will. 4. c. 76.

propriation of any of the said lands, tenements, hereditaments, and premises, shall have been made since the said 5th day of June, to order that the same shall not be called in question under the provisions of this act; and in such case as last aforesaid the same shall not be called in question or set aside or affected under the provisions of this act; provided always, that in every case in which such petition shall have been presented, it shall be lawful for his Majesty, if he shall think fit, to enlarge the time within which (in case his Majesty shall not think fit to make such order as aforesaid), the council may have power as aforesaid to call in question any purchase, sale, lease, demise, contract, or appropriation referred to in such petition."

His Majesty's commission may be issued for certain persons to act as justices in any of such boroughs.

98. "It shall be lawful for his Majesty from time to time to assign to so many persons as he shall think proper his Majesty's commission to act as justices of the peace in and for each borough, and in and for each of the counties of cities and towns respectively named in the said schedule (A.), and in and for such of the boroughs in the said schedule (B.) to which his Majesty may be pleased upon the petition of the council thereof to grant a commission of the peace: provided nevertheless, that every person so to be assigned shall reside within the borough for which he shall be so assigned, or within seven miles of such borough, or of some part thereof, during such time as he shall act as a justice of the peace in and for such borough."

Councils may make bye-laws, on which the crown may appoint salaried justices.

99. "If the council of any borough shall think it requisite that a salaried police magistrate or magistrates be appointed within such borough, such council is hereby empowered to make a bye-law, fixing the amount of the salary which he or they are to receive in that behalf; and such bye-law, so made by any council as aforesaid, shall be transmitted to one of his Majesty's principal secretaries of state; and it shall be lawful thereupon for his Majesty, if he shall think fit, to appoint one or more fit persons according to the number fixed in the said bye-law (being barristers at law of not less than five years' standing), to be, during his Majesty's pleasure, police magistrate or magistrates, and a justice or justices of the peace for such borough, and to direct that such sum shall be paid quarterly, out of the borough fund of such borough, as will be sufficient to pay such yearly salary to each of the justices so assigned as last aforesaid, not exceeding in the whole the salary mentioned in the prayer of such petition, clear of all fees or deductions, as to his Majesty shall seem fit; and the treasurer of such borough shall thereupon pay to each justice so assigned as last aforesaid, out of the borough fund of such borough, the salary so directed to be paid, by four equal quarterly payments, and in the same proportion up to the time of the death of such justice or his ceasing to act under such assignment as aforesaid: provided, that in every case of vacancy of the office of police magistrate in any borough aforesaid, no new appointment of police magistrate in such borough shall be made until the council shall again make application to one of his Majesty's principal secretaries of state in that behalf, and as in the case of the first appointment of a police magistrate in such borough."

Council to provide a police office.

100. "The council of every borough to which a separate commission of the peace shall be granted under the provisions of this act shall be authorized and required to provide and furnish one or more fit and suitable office or offices, to be called 'the police office' or 'offices' of the borough, for the purpose of transacting the business of the justices of such borough, and to pay from time to time, out of the borough fund, such sums as may be necessary for providing, upholding and furnishing, and for the necessary expenses of such police office or offices: provided that no room in any house licensed as a victualling house or alehouse shall be used for the purposes of any such police office."

Justices need not be qualified by estate.

101. "Every person assigned to keep the peace within any borough under the provisions of this act, or any of them, shall, during the continuance of such assignment, execute the duties of a justice of the peace in and for the borough for which he shall have been so assigned, al-

5 & 6 Will. 4, c. 76.

though he may not have such qualification by estate as is required by law in the case of other persons being justices of the peace for a county, provided that such person be not disqualified by law to act as a justice of the peace for any other cause or upon any other account than in respect of estate, and although such person may not be a burgess of the borough in and for which he shall have been assigned to act as a justice of peace; and that every summons for the appearance of any person, or warrant to compel such appearance, or warrant for the apprehension of any person charged with any offence, or search warrant, issued by any justice of the peace acting in and for any borough in any matter within his jurisdiction, may be respectively served and executed within any county in which the said borough shall be situated, or within any distance not exceeding seven miles from such borough, and within such limits as aforesaid, shall have the same force and effect as if the same had been originally issued or subsequently indorsed by a justice of the peace having jurisdiction in the place where the same shall be served or executed, any law, statute, charter or usage to the contrary notwithstanding; and every such summons and warrant shall and may be lawfully served or executed within such limits as aforesaid, by the constable or special constable to whom the same shall be directed: provided nevertheless, that no such person, by virtue of such assignment, shall act as a justice of the peace at any court of gaol delivery or general or quarter sessions, or in making or levying any county rate, or rate in the nature of a county rate."

Such justices not to sit in courts of gaol delivery, &c.

102. "It shall be lawful for the justices of every borough to which a separate commission of the peace shall be granted as aforesaid, at their first or any other meeting, and they are hereby respectively required to appoint a fit person to be the clerk to the justices of such borough, to be removable at their pleasure, and so as often as there shall be a vacancy in the said office of clerk to the justices by death, resignation, removal or otherwise: provided that it shall not be lawful for the said justices to appoint or continue as such clerk to the justices any alderman or councillor of such borough, or clerk of the peace of such borough, or the partner of such clerk of the peace, or any clerk or person in the employ of such clerk of the peace: provided also, that it shall not be lawful for the said clerk to the justices, by himself or his partner, to be directly or indirectly interested or employed in the prosecution of any offender committed for trial by the justices of whom he shall be such clerk as aforesaid, or any of them, at any court of gaol delivery, or general or quarter sessions; and any person being an alderman or councillor, or clerk of the peace of any borough, or the partner or clerk, or in the employ of such clerk of the peace, who shall act as clerk to the justices of such borough, or shall otherwise offend in the premises, shall for every such offence forfeit and pay the sum of one hundred pounds, one moiety thereof to the treasurer of such borough, to be paid over to the credit and account of the borough fund of such borough, and the other moiety thereof, with full costs of suit, to any person who will sue for the same in any of his Majesty's courts of record at Westminster."

Justices to appoint a clerk, who shall not be clerk of the peace, or an alderman or councillor, nor be concerned in the prosecution of offenders committed by the borough justices.

103. "The council of every borough which shall be desirous that a separate court of quarter sessions of the peace shall be or continue to be holden in and for such borough shall signify the same by petition to his Majesty in council, setting forth the grounds of the application, the state of the gaol, and the salary which they are willing to pay to the recorder in that behalf; and it shall be lawful for his Majesty, if he shall be pleased, thereupon to grant that a separate court of quarter sessions of the peace shall be thenceforward holden in and for such borough, to appoint for such borough, or for any two or more of such boroughs conjointly, a fit person, being a barrister at law of not less than five years' standing, who shall be and be called the recorder of such borough or boroughs, and shall hold such office during his good behaviour, and upon any vacancy in any such office to appoint another

His Majesty may grant a separate court of quarter sessions, and appoint a recorder, in certain boroughs.

5 & 6 Will. 4, c. 76.

fit person, being a barrister at law of not less than five years' standing, to be the recorder in the place of the person so making such vacancy; and the council of every such borough shall appoint a fit person to be clerk of the peace during his good behaviour; and the recorder for the time being of any borough shall be a justice of the peace of and for such borough, although he may not have such qualification by estate as is required by law in the case of any other person being a justice of the peace for a county; and such recorder shall have precedence in all places within the borough of which he may be the recorder next after the mayor thereof; and in such case it shall be lawful for his Majesty to direct that an annual salary, not exceeding the sum stated in the petition of the council, shall be paid to such recorder by the treasurer of such borough out of the borough fund: provided always, that no person being such recorder as aforesaid shall be eligible to serve in parliament for such borough, nor shall he be an alderman, councillor, or police magistrate of such borough: provided nevertheless, that nothing in this act contained shall be construed to disqualify any such recorder from being appointed a barrister to revise any list of voters under the provisions of an act passed in the second year of his Majesty, intituled 'An Act to amend the Representation of the People in England and Wales,' or from being eligible to serve in parliament otherwise than is hereinbefore provided: provided also, that in every borough in and for which a separate court of general or quarter sessions of the peace is now holden, and of which the present recorder or deputy recorder is a barrister of five years' standing, such recorder or deputy recorder, being qualified as aforesaid, shall be continued or appointed recorder under the provisions of this act: provided also, that in the case of sickness or unavoidable absence, the recorder of any borough shall be empowered, under his hand and seal, with the consent of the council of such borough, to appoint a deputy recorder, being a barrister of five years' standing, to act for him at the quarter sessions of the peace then next ensuing, and no longer or otherwise."

Recorder to be a justice of the peace for the borough.

but not a member of parliament for the borough, alderman, councillor, or police magistrate.

2 Will. 4, c. 45.

Recorder and justices to make declaration before acting.

104. "Provided nevertheless, that no recorder or person assigned to keep the peace within any such borough shall be capable of acting as recorder or justice of the peace within such borough until he shall have taken the oaths provided to be taken by justices of the peace, except the oath as to qualification by estate, and until he shall have made before the mayor or before any two or more of the aldermen or councillors of such borough (who is and are hereby authorized and required to administer the same) a declaration in the following form; (that is to say);

"'*I A. B. do hereby declare, that I will faithfully and impartially execute the office of recorder* [or '*justice of the peace*'] *for the borough of* , *according to the best of my judgment and ability.*'"

Sessions of the peace to be held for the borough, of which the recorder to be the sole judge (a).

105. "The recorder of every borough shall hold once in every quarter of a year, or at such other and more frequent times as the said recorder in his discretion may think fit, or as his Majesty shall think fit to direct, a court of quarter sessions of the peace in and for such bo-

(a) As to the jurisdiction and powers conferred on the borough sessions under this and the subsequent sections, the following cases have been decided:—

A borough, with a grant of quarter sessions under 5 & 6 Will. IV. c. 76, has exclusive jurisdiction to try an appeal against an order of removal made by borough justices. (*Reg.* v. *Salop*, (*Justices*), 1 *Gale & D.* 146). The borough sessions have jurisdiction to try appeals against orders of removal; and whether or not, since the passing of that statute, they have exclusive jurisdiction over appeals against orders of removal, if they are the next sessions after the order is made, the county sessions have no jurisdiction to try such appeal. (*Reg.* v. *St. Edmund's Sarum* (*Inhabs.*), 1 *Gale & D.* 137). The parish of B. contains the borough of B., which is not co-extensive with the parish, and which before the Munici-

rough, of which court the recorder of such borough shall sit as the sole judge; and such court of quarter sessions of the peace shall be a court of record, and shall have cognizance of all crimes, offences and matters whatsoever cognizable by any court of quarter sessions of the peace for counties in England, and the said recorder shall have power to do all things necessary for exercising such jurisdiction, notwithstanding his being such sole judge, as fully as any such last-mentioned court: provided nevertheless, that no recorder, by virtue of his office, shall have power to make or levy any county rate, or rate in the nature of a county rate, or to grant any license or authority to any person to keep an inn, alehouse or victualling house, to sell exciseable liquors by retail, or to exercise any of the powers herein specially vested in the council of such borough."

5 & 6 Will 4, c. 76.

Recorder not to make or levy county rate, or grant licenses (a).

106. "In the absence of the recorder and deputy recorder, the mayor shall be authorized and required, at the proper times appointed for the holding of such court of quarter sessions of the peace in and for such borough, to open the said court, and to adjourn over the holding of the same, and to respite all recognizances conditioned for appearing at the same, until such further day as such mayor then and there, and so from time to time, shall cause to be proclaimed: provided nevertheless, that nothing in this act contained shall authorize or require any such mayor to sit as a judge of the said court for the trial of offenders, or to do any other act in the character of a judge of such court, save only in opening and adjourning the same, and respiting the said recognizances in manner aforesaid."

Mayor, in the absence of the recorder and deputy recorder, may open and adjourn the court.

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pal Corporation Act had a quarter sessions, with jurisdiction over the whole parish The borough had not six justices, and therefore the parish had the power of appealing to the county sessions against a poor rate under 1 Geo. 4, c. 36. The Municipal Corporation Act threw the outlying parts of the parish into the county jurisdiction: —Held, that sect. 111 did not take away the power of an inhabitant in the outlying parts of the parish to appeal against a poor's rate to the county sessions, and that the sessions might amend or quash the whole rate (*Reg.* v. *Bridgewater, Inhabs.*, 2 *Per. & D.* 586; 10 *Ad. & E* 751).

Quære, whether a parish, part of which is a borough of exclusive jurisdiction, and part in a county, and which had more than six justices at the time of passing the Municipal Corporation Act, has the power of appeal any where against a poor's rate? *Ib.*

The recorder of a borough, which has a commission of the peace and a court of quarter sessions, though it is not a county, has power to try an appeal against an order made by justices or parish officers, under stat. 9 Geo IV. c. 38, for the costs of removing an insane pauper to a lunatic asylum. (*Reg.* v. *St. Lawrence, Ludlow, Inhabs.*, 3 *Per. & D.* 155; 11 *Ad. & E.* 172).

The recorder of a municipal sessions may, on ordering costs, refer the taxation of the amount to an officer of the court, but such taxation must be adopted by him during the continuance of the same sessions, and an order for such costs, founded on a subsequent adoption, is invalid. (*Reg.* v. *Long.* 1 *Gale & D.* 367). In counties of cities, and counties of towns, to which a court of quarter sessions has been granted under stat. 5 & 6 Will. IV. c. 76, the recorder, by sect. 105, has the powers relating to inspectors of weights and measures given by sect. 17 of stat. 5 & 6 Will. IV. c. 63, to the magistrates in quarter sessions assembled, although the present jurisdiction of the recorder be limited to a district less extensive than that which the county comprehended up to the time of passing those statutes. (*Reg.* v. *Hull, Recorder*, 8 *Ad. & E* 638).

(See further, as to the jurisdiction of the recorder, and the borough justices, 7 Will IV. & 1 Vict. c. 78, ss. 30—35, *post*, 130).

(*a*) In a borough, the original charter of which contained a ne intromittant clause, and to which a separate court of quarter sessions had been granted since the stat. 5 & 6 Will. IV. c. 76, an appeal lies from the justices at a special sessions for licensing public houses, under 9 Geo IV. c. 61, to the justices of the county in their quarter sessions, notwithstanding the 111th section of the former act. (*Reg.* v. *Deane*, 1 *Gale & D.* 292).

5 & 6 Will. 4, c. 76.

Capital jurisdictions, and all other criminal jurisdictions in boroughs, other than are specified in this act, abolished.

107. "After the 1st day of May, 1836, all powers and jurisdictions to try treasons, capital felonies, and all other criminal jurisdictions whatsoever granted or confirmed by any law, statute, letters patent, grant, or charter whatsoever, to any mayor, bailiff, alderman, recorder, or other corporate or chartered officer, or corporate or chartered justice of the peace whomsoever, in any borough, and all right of any body corporate in any borough, or any of the members thereof, by virtue of any law, statute, letters patent, grant, or charter whatsoever, to elect or nominate any justices to keep the peace in or for any borough, or by any members of any such corporate body to act as such justices of the peace in or for any of the last-named boroughs other than is herein declared, shall cease: provided nevertheless, that nothing in this act contained shall be construed to restrain or prevent the holding of any court of gaol delivery or general or quarter sessions of the peace in and for any borough for which such court may now be holden, until the said 1st day of May, but every such court may be holden in like manner, and with the same powers, until the said 1st day of May, as if this act had not been passed."

Chartered admiralty jurisdictions abolished.

108. "From and after the passing of this act, so much of all laws, statutes, and usages, and so much of all royal and other charters, grants, and letters patent heretofore granted to any borough or body corporate, whereby such borough or any place within the precincts or liberties of the same, or such body corporate, or the freemen or inhabitants of the same, claims or claim to be exempted and released from the jurisdiction and office of the lord high admiral of England, or of the high court of the admiralty of England, or whereby any body corporate, or any mayor, bailiff, recorder, steward, or other chartered or corporate officer of any borough, has or claims anything belonging to the office of admiral, whether or not to be exercised by virtue of any commission to them or any of them to be directed, shall be and the same is hereby repealed: provided nevertheless, that nothing in this act contained shall extend to alter or affect the jurisdiction and office of the lord warden in his office of admiral of the cinque ports: provided also, that all suits and matters wherein before the passing of this act the rights of any salvors, or any droits or perquisites to the office of admiral belonging were drawn into question, may be continued, heard, determined, and adjudicated upon in like manner as if this act had not passed."

Certain exceptions in 38 Geo. 3, c. 52, repealed.

109. "And whereas an act was passed in the 38th year of his late Majesty George the Third, intituled 'An Act to regulate the Trial of Causes, Indictments, and other Proceedings which arise within the Counties of certain Cities and Towns Corporate within this Kingdom,' but certain cities and counties of cities were excepted out of the operation of the same: and whereas it is expedient to repeal in part the said exceptions; be it therefore enacted, that so much of the last-recited act as provides that nothing therein contained shall extend or be construed to extend to the city or county of the city of Bristol, or the city or county of the city of Chester, or to the criminal jurisdiction of the city of Exeter and county of the same city, shall be and the same is hereby repealed; and that the town of Berwick-upon-Tweed shall be taken to be a county of a town corporate, and to be within all the provisions of the last-recited act; and that after the 1st day of May, in the year 1836, and until his Majesty shall be pleased to direct a commission of oyer and terminer and gaol delivery to be executed within any county of a city or town corporate, all bills of indictment for offences committed within such county of a city or town corporate shall be preferred and all proceedings upon such indictments shall be had as in the last-recited act is authorized to be done, and the counties of the cities and towns corporate named in the first column of the Schedule (C.) to this act annexed shall be considered as next adjoining to the county named in conjunction with the same respectively in the second column of the said Schedule (C.)"

Berwick-upon-Tweed to be a county of a town.

As to trial of offences committed in counties of cities and towns corporate.

110. "After the said 1st day of May, 1836, every person who shall then stand committed to take his trial at any court of gaol delivery, general or quarter sessions of the peace for any borough, charged with any offence which the recorder of such borough after the said 1st day of May will not have jurisdiction to try, may be lawfully removed and committed to the gaol or house of correction of the county in which or adjoining to which such borough is situated, there to remain and take his trial at the next court of quarter sessions for such county, if the offence is cognizable by a court of quarter sessions, and if not, then before the judges of oyer and terminer and gaol delivery at their next circuit; and all persons bound by recognizance to prosecute and give evidence against such offenders shall be bound to appear to prosecute and give their evidence at the court at which such offenders shall be tried as aforesaid; and all such recognizances and all depositions relating to such charges shall be transmitted to the proper officer of the court where such offenders shall be tried; and the sheriff, under-sheriff, gaolers, and other officers of the county in which such offenders shall be so tried are hereby authorized and required in every such case to receive every prisoner so committed to their custody, and him safely to keep until delivered by due course of law; and the judges of assize and others named in his Majesty's commissions of oyer and terminer and gaol delivery, or the justices for the county, as the case may be, in which such offenders shall be tried, are hereby authorized and required to hear and determine all such cases, and to order the payment of the usual and fit expenses of the prosecutors and witnesses, and all other costs and expenses which in like case may be directed to be paid by order of the court."

5 & 6 Will. 4, c. 76.

Offenders committed to borough sessions whose jurisdiction is taken away to be tried in adjoining county.

111. "After the said 1st day of May, 1836, the justices assigned or hereafter to be assigned to keep the peace in and for the county in which any borough is situated, to which his Majesty shall not have granted that a separate court of quarter sessions of the peace shall be holden in and for the same, shall exercise the jurisdiction of justices of the peace in and for such borough as fully as by law they and each of them can or ought to do in and for the said county; and no part of any borough in and for which a separate court of quarter sessions of the peace shall be holden shall be within the jurisdiction of the justices of any county from which such borough before the passing of this act was exempt; any law, statute, letters patent, charter, grant, or custom to the contrary notwithstanding."

County justices to have jurisdiction in all boroughs which have not a separate court of quarter sessions of the peace under this act (a).

112. "Within ten days after the grant of a separate court of quarter sessions of the peace to any borough, the council of such borough shall send a copy of such grant, sealed with the seal of the borough, to the clerk of the peace of the county in which such borough or any part thereof is situated; and after the grant of such court to any borough, it shall not be lawful for the justices of the peace of any county wherein such borough or part of such borough is situate to assess any messuages, lands, tenements, or hereditaments within such borough to any county rate thereafter to be made, but every part of every such borough shall thenceforward be wholly free and discharged from contributing, otherwise than is hereinafter provided, to any rate or assessment of any kind of and for the county in which any part of such borough is situated: provided nevertheless, that all arrears of such rates theretofore made may be levied and collected as if this act had not been passed."

Certain boroughs not to be assessed to county rates (b).

113. "And whereas by an act made in the 7th year of his late Majesty George the Fourth, intituled 'An Act for improving the Administration of Criminal Justice in England and Wales,' it was enacted that all sums directed to be paid by virtue of that act in respect of felonies and

Boroughs to pay the expenses of prosecutions at the assizes. 7 Geo. 4, c. 64 (c).

(a) *See* as to the construction of this section, *ante*, p. 108, n. (a), and *Reg.* v. *Deane*, 1 *Gale & D.* 292.

(b) *See* 6 & 7 Will. IV. c. 104, s. 4, *post*, 138.

(c) *See post*, "*Costs.*"

5 & 6 Will. 4, c. 76

misdemeanors therein enumerated, committed in liberties, franchises, cities, towns, and places which do not contribute to the payment of any county rate, should be paid as therein is directed: be it therefore enacted, that all sums directed to be paid by virtue of the last-recited act in respect to felonies and such misdemeanors as aforesaid, committed or supposed to have been committed in any borough in which a separate court of quarter sessions of the peace shall be holden, shall be paid out of the borough fund of such borough, anything in the said act contained notwithstanding; and the order of court shall in every such case be directed to the treasurer of such borough instead of the treasurer of the county."

Treasurers of counties to keep an account of expenses of prosecution of offenders sent by such boroughs for trial at the assizes, and make order on them for payment thereof. In case of difference respecting such account the same to be referred to arbitration, as provided in 5 Geo. 4, c. 85 (a).

114. "The treasurer of every county in England and Wales shall keep an account of all costs arising out of the prosecution, maintenance, and punishment, conveyance and transport of all offenders committed for trial to the assizes in such county from any borough in which a separate court of quarter sessions of the peace shall be holden; and the treasurer of every such county shall, not more than twice in every year, send a copy of the said account to the council of each of the said boroughs, and shall make an order for payment of the same on the council of such borough; and the council of every such borough shall forthwith order the same, with all reasonable charges of making and sending such account, to be paid to the treasurer of such county out of the borough fund; and in case any difference shall arise concerning the said account, it shall be decided by the arbitration of a barrister to be named as is provided in the case of differences with respect to the payment of monies under contracts made by authority of an act made in the 5th year of his late Majesty King George the Fourth, intituled 'An Act for amending an Act of the last Session of Parliament, relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction, and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales:' provided that nothing herein contained shall be construed to alter or restrain the powers given by the last-mentioned act of contracting with the justices of the peace having authority or jurisdiction in and over any gaol or house of correction of the county wherein or where such borough is situated, or whereto it is adjacent, for the conveyance, support, and maintenance in such last-mentioned gaol or house of correction of pri-

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(a) *See "Gaols," Vol. III.* Under this section, the treasurer of a county may make an order upon the council of a borough, having a separate court of quarter sessions, for the costs arising out of the punishment and maintenance of offenders committed for trial to the county assizes from the borough:—Held, that this clause applied to prisoners committed, in the first instance, to the borough gaol before trial, and, after trial at the assizes, committed to the county prison in execution of their sentences; and that the council was liable, although there was no contract in force, under 5 Geo. IV. c. 85, between the county and borough justices, for the maintenance of such prisoners:—Held, also, that the council was liable, not only for the expenses of food, clothing, and punishment of such prisoners, but for a proportionate share of the general expenses of the county gaol. (*Reg.* v. *Johnson*, 2 *Per. & D.* 610; 10 *Ad. & E.* 740, *S. C.*).

An order of county justices, authorizing a contract with the council of a borough for the maintenance of borough prisoners in the county house of correction, in pursuance of the provisions of this declaration, is an order made under the 5 Geo. IV. c. 85, though the town council derive their power of contracting from this act; and, therefore, sect. 132 does prevent the removal of such order by *certiorari*. A borough, though chartered by the Crown under 7 Will. IV. & 1 Vict. c. 78, s. 49, (*post*, 134), and having a grant of quarter sessions, cannot contract with the justices of the next county or division, for the maintenance of borough prisoners in their house of correction, under this section, if the borough has never had a gaol of its own. (*Reg.* v. *Lancashire*, (*JJ.*), 11 *Ad. & E.* 144).

soners committed thereto from such borough, save only that all such powers shall, after the 1st day of May, 1836, be vested in the council of such borough in the name of the body corporate whose council they are, and in none other; and for the purpose of making such contracts as aforesaid, the council of such borough, and none other, shall have power to make the orders required by the said last-mentioned act to be made by the justices of the borough at the borough sessions." 5 & 6 Will. 4, c. 76.

115. "In every case in which it shall have been made to appear to the satisfaction of one of his Majesty's principal secretaries of state that there is in any borough a gaol or house of correction fit for the confinement of prisoners, the council of any borough shall have the same powers of contracting, in the name of the body corporate whose council they are, with any person or body corporate having the government or ordering of such last-mentioned gaol or house of correction, in like manner as is hereinbefore enacted concerning contracts with justices of the peace having authority or jurisdiction in and over county gaols and houses of correction; and all the provisions of the last-recited act made in the fifth year of his late Majesty shall extend, or as nearly as may be, to all such contracts for the conveyance to and support and maintenance of offenders in such borough, gaol, or house of correction; and in case his Majesty shall have granted to the borough in which such gaol or house of correction shall be situated a separate court of quarter sessions of the peace, such offenders may be tried and sentenced by such court for all offences of which the court has cognisance, and punished accordingly; and all the provisions of the last-recited act made in the fifth year of his late Majesty shall extend as nearly as may be to the trial and punishment of such offenders, and to all acts necessary for such trial or consequent thereon." Council may contract for committing prisoners to the gaol of another borough, if sufficient (a).

116. "And whereas by an act passed in the fourth year of his late Majesty George the Fourth, intituled 'An Act for consolidating and amending the Laws relating to the building, repairing, and regulating of certain Gaols and Houses of Correction in England and Wales,' it was provided, That certain cities, towns, and places included in a certain schedule (A.) to the said act annexed should be taken to be within the provisions of the same: and whereas by an act passed in the 5th year of his late Majesty George the Fourth, intituled 'An Act for amending an Act of the last Session of Parliament, relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction, and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales,' so much of the last-recited act as related to the cities of Canterbury, Lichfield, and Lincoln, was repealed; be it therefore enacted, that the council of every borough named in the last-mentioned schedule (A.) (except the cities of Canterbury, Lichfield, and Lincoln), shall have within their borough all the powers (except in hearing and determining appeals against convictions) which any justices of the peace assembled at their general or quarter sessions in any county in England have within the limits of their commission by virtue of the said last-recited acts or either of them, or as near thereto as the nature of the case will admit; and all things in the said last-recited acts, or either of them, provided to be done at any general or quarter sessions of the peace, shall be done at some quarterly meeting of the council of such borough." Council of certain boroughs to have the same powers under the Acts 4 Geo. 4, c. 64, and 5 Geo. 4, c. 85, as justices of the peace have at their sessions in counties (b).

117. "The treasurer of every county in England and Wales shall keep an account of all sums of money received in aid or on account of the county rate, and of the sum of money expended out of the county rate for other purposes than the costs arising out of the prosecution, Boroughs to pay a proportion of the other county expenditure.

(a) By 6 & 7 Will. IV. c. 105, s 1, *post*, 139, county justices may contract with council of borough in which there is a sufficient gaol for the committal of county prisoners thereto.

(b) *See* "*Gaols*," *Vol. II.*

5 & 6 Will. 4, c. 76.

maintenance, and punishment, conveyance, and transport of offenders committed for trial in such county, and in the case of boroughs having a separate court of quarter sessions of the peace other than out of coroners' inquests, and shall, not more than twice in every year, send a copy of the said account to the council of every borough situate within such county in which a separate court of quarter sessions of the peace shall be holden, and which before the passing of the said act, intituled 'An Act to settle and describe the Divisions of Counties and the Limits of Cities and Boroughs in England and Wales, so far as respects the Election of Members to serve in Parliament,' was chargeable with or liable to contribute in whole or in part to the county rate of such county, and shall make an order on the council of every such borough for the payment of such proportion of such sum as would have been chargeable, after deducting all sums of money received in aid of the county rate as aforesaid, if this act had not passed, upon such borough as the same shall be bounded according to the provisions of this act; and the council of such borough shall forthwith order the same, with all reasonable charges of making and sending the said account, to be paid to the treasurer of such county out of the borough fund; provided that in case any difference shall arise concerning the last-mentioned account, it shall be decided by the arbitration of a barrister to be named as is provided in the case of differences with respect to the payment of monies under contracts made by authority of the said act made in the 5th year of his late Majesty King George the Fourth, intituled 'An Act for amending an Act of the last Session of Parliament, relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction, and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales.'"

2 & 3 Will. 4, c. 64 (a).

5 Geo. 4, c. 85 (b).

Borough courts of record to be holden as heretofore, but in certain cases with extended jurisdiction.

118. "In every borough in which by charter or custom there is or ought to be holden a court of record for the trial of civil actions not regulated by the provisions of any local act of parliament, or in which, at the time of the passing of this act, a barrister of five years' standing shall not act as judge or assessor, the recorder, or in the absence of the recorder, or in case there shall not be a recorder, such officer of the borough as by the charter constituting such court or by custom shall be the judge of such court, shall continue to be and act as such judge; and the council of such borough in every case, whether such court be regulated by the provisions of a local act of parliament or otherwise, shall have power for that purpose to appoint the necessary officer, other than the recorder, before whom such court is to be holden; and every such judge or assessor, other than the mayor, shall hold his office during his good behaviour; and the judge of every such court shall hold the said court at such times and places, and with such rules of practice, and with the same powers and jurisdiction as belonged to the said court at the time of passing this act: provided always, that in every case in which such court had not before the passing of this act authority to try such actions as are hereinafter next mentioned, any such court in which a barrister of five years' standing shall act as judge or assessor shall have authority to try actions of assumpsit, covenant, and debt, whether the debt be by specialty or on simple contract, and all actions of trespass or trover for taking goods and chattels, provided the sum or damages sought to be recovered shall not exceed twenty pounds, and all actions of ejectment between landlord and tenant, wherein the annual rent of the premises of which possession is sought to be recovered shall not exceed twenty pounds, and upon which no fine shall have been reserved or made payable: provided also, that every such judge respectively from time to time may make rules for regulating the practice of such court over which he presides, but so that no such rules shall be of force

(a) *See "Parliament," Vol. V.* (b) *See "Gaols," Vol. II.*

until they shall have been allowed and confirmed by three or more judges of the superior courts of common law at Westminster: provided also, that the jurisdiction of every court of record for the trial of civil actions within any borough shall be extended so far as the metes and bounds of every such borough, as the same shall be and be declared under the provisions of this act: provided also, that no action shall be tried by any such judge, wherein the title to land, whether freehold, copyhold, or leasehold, or other tenure whatsoever, or to any tithe, toll, market, fair, or other franchise shall be in question, in any court which before the passing of this act had not authority to try actions in which such titles as last aforesaid were in question; and in case it shall appear in the course of any action in such court as last aforesaid, or shall be made to appear upon oath to such court as last aforesaid, that any such title as last aforesaid is in question in such action, that then the jurisdiction of such court as last aforesaid in the matter of such action shall cease, and it shall be in the discretion of the court to award costs against the party commencing the same" 5 & 6 Will. 4, c. 76. Proviso

119. "The council of every borough in which there shall be holden a court of record for the trial of civil actions as aforesaid shall appoint a registrar of such court, except in boroughs where the town clerk acts as such registrar, and such other officers and servants as are necessary for carrying on the business and executing the process of such court; provided that no registrar or other officer of such court shall, by himself or any partner, or by his or their clerks, practise as an attorney in such court, nor shall any such partner or clerk act as agent for any other attorney in such court: provided also, that, unless disqualified as herein provided, every attorney of his Majesty's superior courts at Westminster shall have full liberty to practise as an attorney in every such court." Council to appoint registrar and other necessary officers of the court.

120. "No suit commenced in any court of record in any borough before the 1st day of May, 1836, shall abate by reason of any change that shall have been made in the constitution of such court by the provisions of this act, but that the same may continue and be heard and determined as if it had been commenced before such judge." Existing suits not to abate by reason of the change of jurisdiction.

121. "Every person, being a burgess of any borough wherein there shall be a separate court of sessions of the peace, or a court of record for the trial of civil actions, (unless he shall be exempt or disqualified otherwise than in respect of property from serving on juries by virtue of an act passed in the sixth year of the reign of King George the Fourth, intituled 'An Act for consolidating and amending the Laws relative to Jurors and Juries'), shall be qualified and liable to serve on grand juries in such borough, and also upon juries for the trial of all issues joined in any court of quarter sessions of the peace, and in any court of record for the trial of civil actions triable within the borough of which such person shall be a burgess (b), and the clerk of the peace of every such borough shall give public notice of the time and place of holding every such quarter sessions of the peace, ten days at the least before the holding thereof, and shall, seven days at the least before the holding thereof, cause to be summoned a sufficient number of persons, being qualified and liable as aforesaid, to serve as grand jurors at such sessions; and the clerk of the peace and registrar of the court of record respectively shall also cause to be summoned not less than thirty-six nor more than sixty persons so qualified and liable as aforesaid to serve as jurors at every such sessions, and at the holding of every such court Who to be jurors. 6 Geo. 4, c. 50 (a). Summoning of jurors, &c

(a) *See "Jurors," Vol. III.*

(b) By 23 Hen. VIII. c. 13, it was enacted, "that in towns corporate, trials of felons shall be by men worth £40 in goods, though they have no freehold." And in 3 *Salk.* 81, it is said, that when the jury are of a town corporate, it is no challenge that they are not freeholders.

5 & 6 Will. 4, c. 76.

of record for the trial of causes, in case there shall be any cause then to be tried; and such summons shall be made by showing to the person to be summoned, or, in case he shall be absent from the usual place of his abode, by leaving with some person therein inhabiting, notice under the hand of such clerk of the peace or registrar respectively containing the substance of such summons; and such clerk of the peace shall make out a list of the names of such persons so summoned as grand jurors, and the clerk of the peace and registrar respectively shall also make out a panel of such persons so summoned other than grand jurors, and such list and panel shall respectively contain therein the Christian names and surnames, places of abode, and descriptions of the several persons therein named; and if any person, having been duly summoned to attend on any jury, shall not attend in pursuance of such summons, or, being thrice called, shall not answer to his name, or after his appearance wilfully withdraw himself from the presence of the court, the court shall impose such fine upon every person so making default (unless some reasonable excuse shall be proved to the satisfaction of the court) as the court shall think meet; and if any person on whom such fine shall be imposed shall refuse to pay the same to the person who shall be authorized by the court to receive the same, it shall be lawful for the court, then or at its next sitting, by order of the court, signed by the clerk of the peace or registrar respectively, to cause to be levied, by distress and sale of the goods of the person on whom such fine shall have been imposed, every such fine, and the reasonable charges of such distress and sale; and every fine so received shall be paid to the treasurer of the borough, to be by him carried to the account of the borough fund hereinbefore mentioned: provided nevertheless, that no person shall be summoned to serve as a juror at such sessions or court of record oftener than once in one year."

Fine on jurors for non-attendance.

Members of the council, &c., exempt from serving on juries; burgesses of boroughs which have quarter sessions exempt from juries of county quarter sessions.

122. "After the passing of this act every member of the council for the time being of every borough, and every justice assigned to keep the peace therein, and the treasurer and town clerk for the time being of every such borough, shall be exempt and disqualified from serving on any jury summoned within such borough respectively, and exempt from serving on any jury summoned to serve in the county wherein such borough is situate; and all burgesses of every borough in and for which a separate court of quarter sessions of the peace shall be holden, shall be exempt from serving on any jury summoned for the trial of issues joined in any court of general or quarter sessions of the peace, in the county wherein such borough is situate."

All chartered exemptions from serving on juries abolished.

123. "After the passing of this act no person in any borough shall continue to be exempt from serving on juries in any of the king's courts of record at Westminster, or in the superior courts, civil or criminal, of the counties palatine of Lancaster and Durham, or in any court of assize, nisi prius, oyer and terminer, gaol delivery, or sessions of the peace, or in any other of the king's courts, by virtue of any writ, grant, charter, prescription, or otherwise; and so much of an act made in the sixth year of the reign of his late Majesty King George the Fourth, intituled 'An Act for consolidating and amending the Laws relative to Jurors,' as provides that all persons in any borough exempt from serving upon juries in any of the courts aforesaid, by virtue of any prescription, charter, grant, or writ, shall continue to have and enjoy such exemption in as ample a manner as before the passing of that act, and shall not be inserted in the lists thereafter mentioned, shall be and the same is hereby repealed."

6 Geo. 4, c. 50, in part repealed.

Fees payable to the clerk of the peace, clerk to the magistrates, and registrar and officers of the court of record.

124. "The council of every borough shall and they are hereby required, within six calendar months next after their election, to make and settle a table of the fees which shall be taken by the clerk of the peace in those boroughs in which a separate court of quarter sessions of the peace shall be holden, and in those boroughs to which a commission of the peace shall have been granted, a table of the fees to be taken by

the clerk to the justices, and in those boroughs in which there shall be a court of record, a table of the fees to be taken by the registrar and officers of such court; and such table of fees shall be submitted to one of his Majesty's principal secretaries of state; and when such tables of fees shall be confirmed and allowed by such secretary of state, either as such table shall have been submitted to him, or with such alterations, additions, or abatements as he shall think proper, the fees therein mentioned may thenceforth be lawfully taken by the person therein named to be entitled thereunto; and it shall be lawful for the council of such borough from time to time, as occasion may require, to make new tables of fees to be taken instead of the fees contained in the tables which shall have been made as aforesaid, which new table shall be confirmed and allowed in the manner hereinbefore mentioned, otherwise the same shall be of no validity; and that until tables of the fees so to be taken in any such borough shall have been made and confirmed as aforesaid, it shall be lawful for such clerk of the peace at the quarter sessions for any such borough, and such clerk to the justices, to take the fees authorized by the table for the time being to be taken by the clerk of the peace at the quarter sessions and clerk to the justices respectively for the county within or adjoining to which such borough is situated, and for the registrar and officers of such court of record to take the fees usually taken by them before the passing of this act." (*See* 6 & 7 *Will. IV. c.* 105, *s.* 8, *post*, 140). 5 & 6 Will. 4, c. 76.

125. "The town clerk of every borough shall cause a true copy of the tables of fees in force for the time being to be hung up in a conspicuous part of the room in which the business of his office is transacted, and also in the room wherein the justices of the peace of such borough shall sit for transacting their business, and also in the room wherein the court of quarter sessions of the peace for the borough shall be held, and also in the court of record of the said borough." Table of fees to be hung up.

126. "When by any act any penalties or forfeitures are or shall hereafter be made recoverable in a summary manner before any justice or justices of the peace, and by such act respectively the same are or shall be limited and made payable to his Majesty, or to any body corporate, or to any person whomsoever, save and except the informer, who shall sue for the same, or any party aggrieved, in every such case the same, if recovered and adjudged before any justice of any borough in which a separate court of quarter sessions of the peace shall be holden as aforesaid, shall, notwithstanding any thing in such act respectively contained, be recovered for and adjudged to be paid to the treasurer of such borough for the time being, to the credit and on account of the borough fund of such borough; and no such penalty or forfeiture, or share of such penalty or forfeiture, shall in any case be recovered by or adjudged to be paid to any other person than the said treasurer, unless such person be the informer or the party aggrieved: provided always, that nothing herein contained shall extend to any penalties or forfeitures recovered under any act relating to the customs, excise, and post office, or to trade or navigation, or any branch of his Majesty's revenue." Application of penalties.

127. "And for the more effectual prosecution of offences punishable upon summary conviction by virtue of this act, be it enacted, that the prosecution for every such offence shall be commenced within three calendar months after the commission of the offence, and not otherwise; and that where any person shall be charged on the oath of a credible witness with any such offence before a justice of the peace, the justice may summon the party charged to appear before any two justices of the peace acting in and for the borough in which such offence shall have been committed, at a time and place to be named in such summons; and if such party shall not appear accordingly, the justices of the peace then and there present (upon proof of the due service of the summons by delivering a copy thereof to the party, or by delivering such copy at the Limitation of time for prosecution of offences punishable on summary conviction.

5 & 6 Will. 4, c. 76.

party's usual place of abode to some inmate thereat, and explaining the purport thereof to such inmate), may either proceed to hear and determine the case in the absence of the party, or may issue their warrant for apprehending and bringing such party before them, as they shall think proper."

Power to summon witnesses.

Penalty for disobedience of summons, &c.

128. "It shall be lawful for any justice of the peace acting in and for any borough to issue his summons requiring any person to appear before any such justices of the peace for the purpose of giving evidence touching any offence against this act; and if any person so summoned shall neglect or refuse to appear at the time and place appointed by such summons, and no reasonable excuse for his absence shall be proved before the justices of the peace then and there present, or if any person appearing in obedience to such summons shall refuse to be examined on oath touching any such offence by the justices then and there present, every person so offending shall, on conviction thereof before the said justices, or any other justices of the peace, forfeit and pay such sum of money not exceeding five pounds as to the convicting justices shall seem meet; and no person, although liable to the rate contributing to the borough fund of any borough, shall be deemed an incompetent witness in proof of any offence against this act by reason of any penalty or forfeiture for such offence being applicable to the use of such borough fund; and no justice of the peace shall be disabled from acting in the execution of this act by reason of his being liable to the rate contributing to the borough fund of any borough."

No witness or justice to be incompetent on the ground of rateability (a).

Payment of penalties;

may be levied by distress;

or offender imprisoned.

129. "The justices of the peace by whom any person shall be summarily convicted and adjudged to pay any sum of money for any offence against this act may adjudge that such person shall pay the same either immediately or within such period as the said justices shall think fit; and in case such sum of money shall not be paid at the time so appointed, the same shall be levied by distress and sale of the goods and chattels of the offender, with the reasonable charges of such distress; and for want of sufficient distress such offender shall be imprisoned, with or without hard labour, in the common gaol or house of correction, as to the convicting justices shall seem meet, for any term not exceeding one calendar month where the sum to be paid shall not exceed five pounds, and for any term not exceeding two calendar months in any other case, the imprisonment to cease in each of the cases aforesaid upon payment of the sum due."

Form of conviction (b).

130. "The justices of the peace before whom any person shall be summarily convicted of any offence against this act may cause the conviction to be drawn up in the following form of words, or in any other words to the like effect, as the case may require; (that is to say),

'to wit. { *BE it remembered, that on the day of , in the year of our Lord , in the borough of , in the county of ,* *A. O. is convicted before us, J. P. and J. J. P., two of his Majesty's justices of the peace for the said county,* [or "*borough*" or otherwise, as the case may be], *for that the said A. O. did* [here specify the offence, and the time and place when and where the same was committed, as the case may be]; *and we do adjudge that the said A. O. shall for the said offence forfeit the sum of , and shall pay the same immediately* [or "*shall pay the same on or before the day of ,*"] *to , the treasurer for the said borough, to be by him applied according to the directions of the statute in that case made and provided. Given under our hands the day and year first above mentioned.*'"

Appeal against convictions (c).

131. "Any person who shall think himself aggrieved by any summary conviction in pursuance of this act may appeal to the next court of general or quarter sessions of the peace to be holden not less than twelve days after such conviction for the county or for the borough

(a) By 6 & 7 Will. IV. c. 104, s. 6, *post*, 138, burgesses are competent witnesses.

(b) *See in general*, "*Conviction*," Vol. I.

(c) *See in general*, "*Appeal*," Vol. I.

wherein the cause of complaint shall have arisen, provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or enter into a recognisance, with a sufficient surety, before a justice of the peace, within such three days, or at any time during his custody, on giving to the complainant three days' notice in writing of his intention so to do, and of the name, description, and place of abode of his proposed surety, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given and such recognisance entered into the justice before whom the same shall be entered into shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal or the affirmance of the conviction, shall order and adjudge the offender to be dealt with and punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment." 5 & 6 Will. 4, c. 76.

132. "No conviction, order, warrant, or other matter made or purporting to be made by virtue of this act shall be quashed for want of form, or be removed by certiorari or otherwise into any of his Majesty's courts of record at Westminster; and no warrant of commitment shall be held void by reason of any defect therein, provided that it be therein alleged that it is founded on a conviction, and there be a good and valid conviction to sustain the same; and where any distress shall be made for levying any money by virtue of this act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto, nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for the special damage, if any, in an action upon the case." No certiorari, &c. (a) Defects in form, &c. (b).

133. "And for the protection of persons acting in the execution of this act, be it enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this act shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases." Venue in proceedings against persons acting under act (c). Notice of action. General issue. Tender of amends, &c. Costs.

(a) *See ante*, "*Certiorari*," *Reg.* v. *Rippon*, (*JJ.*) 7 *Ad. & E.* 417, *and Reg.* v. *Lancashire*, (*Justices*), 11 *Ad. & E.* 144, *and* 7 *Will. IV. &* 1 *Vict. c.* 78, *s* 44, *post*, 133.

(b) *See* "*Conviction*," Vol. I.

(c) *As to clauses of this description, see tit.* "*Conviction*," Vol. I., "*Justices*," Vol. III.

5 & 6 Will. 4, c. 76.

Jurisdiction of the cinque ports preserved (a).

134. "The courts of quarter sessions of the peace of the towns and ports of Hastings, Sandwich, Dovor, and Hythe, and of the ancient town of Rye, or of such of the said towns and ports and ancient town to which his Majesty shall grant a separate court of quarter sessions of the peace, shall have jurisdiction over offences and matters committed, arising, and happening as well within the boundaries of such towns and ports and ancient town respectively as within the ancient members and liberties not being corporate of the same respectively, and also within the towns named in the schedule to this act which are ancient corporate members and liberties of the said towns and ports and ancient town respectively, and to which his Majesty shall not grant a separate court of quarter sessions of the peace; and also any or either of the said towns and ports of Hastings, Sandwich, Dovor, and Hythe, and ancient town of Rye, to which his Majesty shall not grant a separate court of quarter sessions of the peace, and their or its members and liberties, shall for all purposes relating to the jurisdiction of courts of quarter sessions of the peace be respectively within the jurisdiction of the courts of quarter sessions of the peace of the nearest other of the said towns and ports or ancient town to which his Majesty shall grant a separate court of quarter sessions of the peace; and the recorders, clerks of the peace, and coroners of the said towns and ports and ancient town respectively, or of such of them to which his Majesty shall grant a separate court of quarter sessions of the peace respectively, shall and may have and exercise the same jurisdiction, powers, and authorities within all places within or subject to the jurisdiction of such courts respectively, as within the said ancient towns and ports and ancient town respectively of which they are or may be appointed recorders, clerks of the peace, or coroners."

Jurisdiction of the cinque ports further preserved.

135. "The justices of the peace of the towns and ports of Hastings, Sandwich, Dovor, and Hythe, and of the ancient town of Rye, or of such of the said towns and ports and ancient town as shall have justices of the peace assigned to them by virtue of this act, shall and may have and exercise the same jurisdiction, powers, and authorities over offences and matters committed, arising and happening within the ancient members and liberties not being corporate of such towns and ports and ancient town respectively, as such justices shall and may have and exercise within the towns and ports and ancient town for which they are or may be respectively justices of the peace; and also his Majesty's justices of the peace, acting under the authority of a commission or commissions, issued by virtue of an act passed in the fifty-first year of the reign of his late Majesty King George the Third, intituled 'An Act to facilitate the execution of Justice within the Cinque Ports,' shall and may have and exercise all the jurisdiction, powers and authorities given to such justices by such act of parliament, as well within the members and liberties not being corporate of the said towns and ports and ancient town respectively as within the said towns named in the schedules to this act being corporate members and liberties thereof, or any of them, or any of the said towns and ports and ancient town which shall not have justices of the peace assigned to them by virtue of this act: provided always, that nothing herein contained shall affect the liability of all inhabitant householders within any of the members and liberties of the cinque ports and ancient towns thereof, not being corporate, to serve on juries at quarter sessions as heretofore (b)."

51 Geo. 3, c. 36.

Proviso as to juries in the cinque ports' liberties.

Act not to affect letters-patent founding a grammar school at Louth.

136. Provided always, "that nothing contained in this act shall alter or affect certain letters-patent bearing date in the fifth year of the reign of his Majesty King Edward the Sixth, founding a free grammar school at Louth, in the county of Lincoln, and creating a body corporate for

(a) See the repeal in part of these provisions in the 6 & 7 Will. IV. c. 105, ss. 10, 11, *post*, 141.

(b) See 6 & 7 Will. IV. c. 105, s. 11, *post*, 142.

the management and regulation thereof, and for the benefit of twelve poor persons mentioned in the said letters-patent, by the name of the 'warden and six assistants of the town of Louth and free school of King Edward the Sixth in Louth;' but that the said warden and assistants shall continue and be a body corporate with perpetual succession under the provisions of the said letters-patent, for the management and regulation of the said school and the purposes aforesaid only, and shall remain and be seised of and entitled to all lands, tolls, tenements, and hereditaments now vested in them for the purposes therein mentioned, in the same manner to all intents and purposes as if this act had not been passed."

5 & 6 Will 4 c 76.

137. "Nothing in this act contained shall be construed to alter or affect the rights or privileges, duties or liabilities, of the chancellor, masters, and scholars of the universities of Oxford or Cambridge respectively, as by law possessed under the respective charters of the said universities or otherwise, or to entitle any person to be inrolled a citizen of the city of Oxford or burgess of the borough of Cambridge, by reason of his occupation of any rooms, chambers, or premises in any of the colleges or halls of the universities of Oxford or Cambridge, or either of them, or to compel any resident member of either of the said universities to accept any office in or under the body corporate of the mayor and citizens of the city of Oxford, or of the mayor and burgesses of the borough of Cambridge, or to authorize the levy of any rate within the precincts of the said universities, or of any of the colleges or halls of the same, which now by law cannot be levied therein."

Saving of the rights of the universities of Oxford and Cambridge.

138. "All the jurisdictions and authorities now exercised in and over the precinct or close of any cathedral shall be continued, as if this act had not been passed, concurrently with the jurisdiction and authority of the justices of the peace of the borough within which such close is situated; and that nothing herein contained shall affect or interfere with the rights and privileges granted by charter or act of parliament to the university of Durham."

Not to affect jurisdiction over precincts of cathedrals, nor rights of university of Durham.

139. "In every case in which any body corporate, or any particular class, number, or description of members, or the governing body of any body corporate, now is or are in their corporate capacity, and not as charitable trustees, according to the meaning and provisions of this act, seised or possessed of any manors, lands, tenements, or hereditaments whereunto any advowson or right of nomination or presentation to any benefice or ecclesiastical preferment is appendant or appurtenant, or of any advowson in gross, or hath or have any right or title to nominate or present to any benefice or ecclesiastical preferment, every such advowson and every such right of nomination and presentation shall be sold at such time and in such manner as the commissioners appointed by his Majesty to consider the state of the established church in England and Wales with reference to ecclesiastical duties and revenues may direct, so that the best price may be obtained for the same; and it shall be lawful for the council of such body corporate, and they are hereby authorized and required, with the consent of the said commissioners or any three or more of them, in writing under their hands, to convey and assure under the common seal of such body corporate such advowson or such right of nomination or presentation as aforesaid to the purchaser or purchasers thereof respectively, his or their heirs, executors, administrators, and assigns, or to such uses as he or they shall direct; and the proceeds of every such sale shall be paid to the treasurer of the borough, whose receipt shall be a sufficient and effectual discharge to the purchaser or purchasers to whom the same shall be given for the amount of his or their purchase money, and shall be by him invested in government securities for the use of the body corporate, and the annual interest payable thereon shall be carried to the account of the borough fund: provided always, that in any case of vacancy arising before any such sale shall have taken place and been completed, such vacancy shall be supplied by the presentation or nomination of the

In cases where bodies corporate are seised in their corporate capacity of advowsons, &c., the same may be sold as ecclesiastical commissioners may direct.

Vacancy arising before sale to be supplied by bishop of the diocese.

5 & 6 Will. 4. c. 76.

bishop or ordinary of the diocese in which such benefice or ecclesiastical preferment is situated."

Periods connected with first registration and election may be deferred by order in council.

140. "And whereas it may happen that the several provisions of this act cannot be carried into effect within the several periods in the present year hereinbefore specified and limited in that behalf; be it therefore enacted, that it shall be lawful for his Majesty, if he shall think fit, by the advice of his privy council, to order any days and times before the first day of February next for doing the several matters required or authorized by this act to be done, in lieu of the several days and times for the present year hereinbefore specified, or any of them; and in such case all matters mentioned in such order shall be done on and within such days and times as shall be mentioned respectively in that behalf in such order, as if the days and times mentioned in such order had in every instance been mentioned in this act instead of the days and times hereinbefore respectively mentioned in that behalf, and not otherwise: provided always, that nothing herein contained shall authorize his Majesty to appoint any days or times other than are hereinbefore specified for any matters required or authorized by this act to be done after the expiration of this present year: provided also, that no person shall be entitled to be inrolled in the burgess roll of any borough in this present year unless he would have been entitled on the last day of August in this year to have his name included in some overseer's list, if such list had been made out on the fifth day of September in this year."

The king empowered to grant charters of incorporation (a).

141. "And whereas sundry towns and boroughs of England and Wales are not towns corporate, and it is expedient that several of them should be incorporated; be it enacted, that if the inhabitant householders of any town or borough in England and Wales shall petition his Majesty to grant to them a charter of incorporation, it shall be lawful for his Majesty, by any such charter, if he shall think fit, by advice of his privy council, to grant the same, to extend to the inhabitants of any such town or borough within the district to be set forth in such charter the powers and provisions in this act contained; provided nevertheless, that notice of every such petition, and of the time when it shall please his Majesty to order that the same be taken into consideration by his privy council, shall be published by royal proclamation in the London Gazette one month at least before such petition shall be so considered."

Interpretation clause.

142. "In the construction of this act the word 'borough' shall be construed to mean city, borough, port, cinque port, or town corporate, named in one of the said schedules (A.) and (B.); and the words 'body corporate' shall be construed to mean body corporate named in one of the said schedules (A.) and (B.); and the word 'burgess' shall be construed to mean citizen in the case of a city; and the word 'county' shall be construed to mean county, riding, parts, liberty, or division; and the word 'trustees' shall be construed to mean trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, by whatever name they are designated; and the word 'parish' shall be construed to mean parish, township, vill, hamlet, chapelry, tithing, district, precinct, or place maintaining its own poor; and the words 'overseers of the poor' shall be construed to mean all persons who execute the duties of overseers of the poor; and that in all things hereinbefore provided to be done, until the first election of councillors in any borough under this act shall have been declared, the word 'mayor' shall be construed to mean the chief officer of a borough, by whatever name he is now called; and in describing any person or thing, any word importing the singular number shall be construed to mean also several persons or things respectively, unless

(a) See 7 Will. IV. & 1 Vict. c. 78, s. 49, *post*, 134.

there be something in the subject or context repugnant to such construction; and that no misnomer or inaccurate description of any person, body corporate, or place named in any schedule to this act annexed, or in any roll, list, notice, or voting paper required by this act, shall hinder the full operation of this act with respect to such person, body corporate, or place, provided that the description of such person, body corporate, or place be such as to be commonly understood." 5 & 6 Will. 4, c. 76.

By the 7 Will. IV. & 1 Vict. c. 78, intituled "An Act to amend an Act for the Regulation of Municipal Corporations in England and Wales," (17th July, 1837), and reciting, "Whereas an act was passed in the fifth and sixth years of the reign of his present Majesty, intituled 'An Act to provide for the Regulation of Municipal Corporations in England and Wales,' providing among other things for the election of certain officers in manner and form therein declared, but such elections have not in all cases been duly made according to the provisions of the said act: And whereas doubts are entertained by and before whom the meetings for such elections can now be convened and holden for the purpose of supplying such deficiencies: And whereas the elections of corporate officers and others are liable to be questioned by reason of any defect that may be in the title of the presiding officer before whom the election may have been had, notwithstanding that the election may have been otherwise good in all respects; it was therefore enacted, That no election of any person into any corporate office which shall take place after the passing of this act shall be liable to be questioned by reason of any defect in the title or want of title of the person before whom such election may have been had, provided that the person before whom such election shall be had shall be then in the actual possession of or acting in the office giving the right to preside at such election; and, subject and without prejudice to the provisions for discontinuing proceedings hereinafter contained, all elections into any corporate office since the twenty-fifth day of December in the year one thousand eight hundred and thirty-five, in any borough named in either of the Schedules (A.) and (B.) annexed to the said act for regulating corporations, and all acts duly done in right of their office since the said twenty-fifth day of December by the persons chosen at any such election, and all acts duly done by any person with reference to any such election, shall be good to all intents and purposes, notwithstanding any defect in the title or want of title in the person so presiding arising from the provisions of the said act or of any former charter or any local custom not having been duly complied with, and notwithstanding that there may not have been at the time of the passing of the said act any such body corporate as is named in the Schedule (A.) or (B.) of the said act in conjunction with the name of the borough in which such election may have been had, or any such officer as is charged by the said act with the execution of such duties; provided that the person or persons before whom or by whose authority any such election may have been had, or by whom any summons shall have been issued, or list made out or received, or other act done for holding or with reference to any such election, shall have *bonâ fide* taken upon himself the duties of the office giving right to preside at such election, or issue such summons, or make out or receive such list, or do such act as aforesaid; provided nevertheless, that nothing hereinbefore contained shall prevent any such election or act done by any person from being questioned and set aside by reason of any fraud or any irregularity or defect other than is hereinbefore specified: provided also, that nothing in this act contained shall extend to invalidate any payment *bonâ fide* made, or to invalidate or render valid any notice to quit given before the passing of this act, or render liable to any penalty or punishment any person who would not have been liable to such penalty or punishment in case this act had not been made."

7 Will. 4 & 1 Vict. c. 78.

5 & 6 Will. 4, c. 76.

Election not to be questioned for title of presiding officers;

provided that the person shall have taken upon himself the office.

Proviso.

Proviso

7 Will. 4 & 1 Vict. c. 76.

All elections duly made since 25th December good, though the whole number of aldermen not elected.

Nothing herein to affect any person in actions to try the right to office of profit.

2. "That all elections duly made or other acts duly done since the said twenty-fifth day of December at any meeting of the council or councillors of any borough named in either of the schedules of the said act by a majority of the members of the council or councillors present at such meeting, the whole number present not being less than one third part of the number of the whole council, shall be good notwithstanding that the whole or due number of aldermen may not have been then elected: provided always, that nothing in this act contained shall extend to affect the right of any person to prove the validity or invalidity of any election or act had or done before the passing of this act, and hereby made good or valid, in any action already brought or hereafter to be brought to try the right to any office of profit, or to recover the profits or receipts thereof; and every such action in which it may be material to either party to prove the validity or invalidity of any such election or act shall be tried and decided to all intents and purposes as if this act had not passed; provided that such action shall be brought within twelve calendar months after the passing of this act."

Elections before the election of assessors to be valid.

3. "That all elections had before the passing of this act, or to be had under this act, in any borough named in either of the said schedules, at any time before the election of assessors for such borough, shall be as good as if had before the mayor and assessors jointly."

5 & 6 Will. 4, c. 76, s. 43, in part repealed.

4. "And whereas by the said act it is provided, that in every case in which there shall be a division into wards of any borough, the assessors who shall hold the court for revising the burgess lists with the mayor shall be the assessors of the mayor's ward; and it may be, in case the mayor be chosen from among the aldermen, that there is no mayor's ward in such borough; be it enacted, That so much of the said act as provides that the assessors who shall hold the court for revising the burgess lists with the mayor shall be the assessors of the mayor's ward is hereby repealed; and in every borough divided into wards two assessors shall be chosen on the twenty-first day after the passing of this act, and in every subsequent year on the first day of March, or on the following day, if that day be on a Sunday, to hold the court for revising the burgess lists with the mayor, in like manner as is provided in the said act concerning the election of two auditors of such borough; and no burgess list which shall have been revised before the passing of this act by the mayor alone, or by the mayor assisted by any other person or persons, shall be taken to have been ill revised by reason of the mayor not having been assisted by the assessors of the mayor's ward, but every such revised list, if otherwise revised according to the provisions of the said act, shall be good, and the fair and true copy thereof, made according to the provisions of the said act, shall be the burgess roll for the present year in that borough."

Two revising assessors to be chosen in like manner as the auditors are.

Burgess roll not to be questioned for the title of the mayor or assessors.

5. "That after the passing of this act no burgess roll shall be liable to be questioned by reason of any defect of title or want of title of the mayor or assessors by whom the same shall have been revised, or any or either of them, provided that he or they shall have been in the actual possession and exercise of the office of mayor or assessor, as the case may be."

Burgess roll to be in force until revision of new burgess roll.

6. "That in every borough in which by reason of any neglect or informality a new burgess roll of the said borough shall not have been duly made in any year within the time directed by the said act, the burgess roll which was in force before the time appointed for the revision shall continue in force until such new burgess roll shall have been duly made."

Corporations not dissolved by neglect to make new burgess roll.

7. "That no body corporate named in the schedules of the said act for regulating corporations, in which no new burgess roll was made in the month of October last, shall therefore be taken to have been dissolved, but every such body corporate shall have and continue to have perpetual succession, and all the rights, powers, privileges, and liabilities which it would have had if the new burgess roll had been duly

made; and in any case in which no councillors shall have been elected on the first day of last November to supply the place of those who were then to go out of office according to the provisions of the said act, the councillors who were to continue in office shall so continue in like manner and for the same time as if such new election had been duly made."

7 Will. 4 & 1 Vict. c. 78.

8. "That in every case in which, under the provisions of the said act for regulating corporations, any person shall be entitled to reckon the rating and occupancy of any house, warehouse, counting-house, or shop in any borough by any other person as part of his own rating and occupancy, it shall not be necessary, in support of the title of such person to be enrolled on the burgess roll, to prove that he was an inhabitant householder within the said borough, or within seven miles of the said borough, or that he was an occupant or rated within the same, before the title to such house or other property as aforesaid shall have devolved upon him."

As to reckoning a former person's rating and occupancy as part of a subsequent occupier's.

9. "That the rating in the name of the person previously occupying shall be considered a sufficient rating of the person so entitled until a new rate shall be made subsequent to such devolution of title as aforesaid."

Rating in name of former occupier sufficient.

10. "That in every borough named in the said schedules in which or in any ward or wards of which it is doubtful who should have gone out of the council in the month of November last, by reason of the same number of votes having been given for two or more persons, and by reason of the council not having determined who should then go out of office according to the provisions of the said act for regulating corporations, all the councillors in such borough or ward respecting whose continuance in office any such doubt shall arise shall continue in office for the same time as if they had been elected on the said first day of November now last past; and the council shall determine which of them shall go out of office on the first day of November now next ensuing; and if the doubt shall extend to those who should have gone out of office on the first day of November now next ensuing, the council shall also determine which of them shall go out of office on the first of November in the year one thousand eight hundred and thirty-eight."

Provision for certain cases in which there has been equality of votes.

11. "That so much of the said act for regulating corporations as provides that no new election of councillors shall be made by reason of any extraordinary vacancy in the office of councillor unless the number of councillors remaining after such vacancy shall not exceed two thirds of the whole number of the council of the borough, is hereby repealed; and that every election of a councillor to supply any such extraordinary vacancy, either alone or together with other councillors which shall have been had on the first day of November last, shall be valid, although the number of councillors did then exceed two thirds of the whole number of the council, and although such vacancy may have happened more than ten days previously to the said first day of November last, if in other respects such election shall have been duly had according to the provisions for the annual election of councillors contained in the said act for regulating corporations; and the councillor elected by the smallest number of votes at such election, if elected with other councillors, shall be the councillor elected to supply such extraordinary vacancy as aforesaid; and in every case in which more than one such extraordinary vacancy shall be so supplied, the councillor elected by the smallest number of votes shall be taken to be elected in the room of him who would regularly have first gone out of office, and the councillor elected by the next smallest number of votes shall be taken to be elected in the room of him who would regularly have next gone out of office, and so with respect to the other."

Repeal of provision relating to vacancies in the council.

Provision in lieu thereof

12. "That in every borough named in the said act in which by reason of any failure in complying with the directions of the said act the full number of councillors or ward assessors hath not been elected

Vacancies among the councillors or ward assessors how to be supplied.

7 Will. 4 & 1 Vict. c. 78.

according to the true intent and meaning of the said act, the burgesses of the borough, or of the several wards in which the vacancies may be that ought to be filled up, as the case may be, shall, on the fourteenth day after the passing of this act, openly assemble and elect the councillors and ward assessors, to be elected in the manner directed in the said act; and the mayor, or if there shall be no mayor the councillor assessed to the poor to the greatest amount in respect of any messuage, land, tenement, tithe, or other hereditaments of which he is occupier and also owner within such borough, shall preside at such election in the case of a borough not divided into wards, and in the case of a borough divided into wards the councillors elected in each ward shall separately choose the councillor who shall preside at the election of councillors and ward assessors in that ward, or in case a majority of them in any ward cannot agree, then the councillor elected in that ward who is assessed to the poor to the greatest amount in respect of any messuage, land, tenement, tithe, or other hereditaments of which he is occupier and also owner within the borough, shall preside at such election, and shall have in that behalf all the powers given by the said act to the mayor of the borough in the first election of councillors."

Mayor or councillor to convene a meeting of the council to supply vacancies in the office of alderman or mayor.

13. "That the mayor of every borough named in the said act, and in which no alderman or less than the full number of aldermen shall have been elected, or if there shall be no mayor the councillor who shall be chosen for that purpose by the greatest number of councillors within the borough, or in case a majority of them shall not be able to agree, then the councillor chosen before the passing of this act assessed and being occupier and owner as aforesaid to the greatest amount in the whole borough, shall within ten days after the vacancies (hereinbefore last mentioned) shall have been filled up convene a meeting of the council for the purpose of filling any vacancies in the office of alderman, or of mayor, or of mayor and alderman, as the case may be; and at every such meeting such mayor or councillor shall preside, and the council shall proceed to elect the aldermen then to be elected; and immediately after the election of aldermen, if any aldermen are then to be elected, the council shall proceed to elect a mayor, if there shall then be no mayor; and the councillor by whom the meeting was convened shall continue to preside at the election of mayor; and in every case of vacancy which may be occasioned among the councillors by reason of any such election of aldermen, and which ought to be filled according to the provisions of the said act, the mayor shall convene a meeting of burgesses for the purpose of filling such vacancy in the manner provided by the said act in the case of extraordinary vacancies in the office of councillor: provided always, that the president of any such meeting of the council holden under the provisions of this act for the election of a mayor or alderman in any borough in which there shall be no mayor shall have a second or casting vote in case of an equality of votes."

Manner of electing aldermen.

14. "That after the passing of this act the election of aldermen by the council shall be in manner following; that is to say, every member of the council entitled to vote in that election may vote for any number of persons, not exceeding the number of aldermen then to be chosen, by personally delivering at such meeting, to the mayor or chairman of the meeting, a voting paper containing the Christian name and surname of the persons for whom he votes, with their respective places of abode and descriptions, such paper being previously signed with the name of the member of council voting; and the mayor or chairman of the meeting, as soon as all the voting papers have been delivered to him, shall openly produce and read the same, and immediately afterwards deliver them to the town clerk, to be kept among the records of the borough; and in case of equality of votes among those entitled to vote, the mayor or chairman shall have a casting vote, whether or not he may be entitled to vote in the first instance."

Auditors and

15. "And whereas by the said act for regulating corporations it is

provided, that no burgess shall be eligible to be or be elected an auditor or assessor who shall be of the council; be it also enacted, that no burgess shall be eligible to be elected a member of the council while holding the office of assessor or elective auditor.

7 Will 4 & 1 Vict c 78.

Assessors disqualified to be of the council.

16. "That in case of the illness or incapacity to act of any alderman at any election, the mayor shall be empowered to appoint another alderman to act in the room of such alderman during such illness or incapacity."

In case of illness of alderman at election.

17. "That every assessor shall be empowered, and he is hereby directed, as soon as conveniently may be after his election, and from time to time as the occasion may arise or to him may seem fit, to appoint under his hand a deputy to act for him in case of his illness or incapacity to act at any election or any revision of the burgess lists; and every such appointment shall be signified by him in writing under his hand to the council, and shall be recorded on the minutes of their proceedings."

Assessor may appoint a deputy

Appointment to be signified to the council.

18. "That at any election under the provisions of the said act or of this act it shall be lawful for the presiding officer to close the poll at any time before four of the clock, if one hour shall have elapsed during which no vote shall have been tendered for any candidate; provided that no person or persons have within the last hour been prevented from coming to the poll by any riot, violence, or other unlawful means, of which notice shall have been given to the returning officer."

Poll may be closed if an hour has elapsed without a vote being tendered.

19. "That every mayor elected under the provisions of this act shall continue in office until his successor shall have accepted the office of mayor, and shall have made and subscribed the declaration required in that behalf; and every alderman and councillor elected under the provisions of this act shall continue in office for the same time as if he had been elected in the month of November last according to the directions of the said act for regulating corporations."

Mayor, aldermen, and councillors under this act to continue as if elected in due time.

20. "That every proceeding commenced before the passing of this act, and still pending in the Court of King's Bench, against any person upon any ground on which it is herein declared that the validity of the election into any corporate office shall not be questioned, or for the purpose of bringing into question the validity of any election or act which is herein declared to be good, shall be discontinued immediately upon the passing of this act, upon payment of the costs incurred up to that time; and the prosecutor or relator shall be entitled to receive from the defendant in every such proceeding all such costs, to be taxed as between attorney and client, according to the practice of such court."

Proceedings on account of defects cured by this act to be discontinued.

21. "That no advantage shall be taken of the invalidity of any election which shall be rendered valid by this act in any action already brought or which may be hereafter brought by any corporation, but such action shall be tried on its merits, as if no such objection could be set up against the plaintiff's right of proceeding, but the court in which such action is or shall be brought, or any judge of the same court in vacation, shall, on application of the defendant, if the court or judge think the invalidity of any such election would have been a defence to such action, order the plaintiff in any such action to pay such defendant his costs up to the time of the application, and also his costs of the application, taxed as between party and party."

No advantage to be taken under this act in actions brought by any corporation.

22. "That from and after the commencement of this act any burgess of any borough shall be at liberty, at all seasonable times, to make any copy of or take any extract from the book required by the said act to be kept for the purpose of entering the minutes of council, and also to make any copy or take any extract from any order in council of such borough for the payment of any money; and it shall also be lawful for any alderman or councillor of any borough, at all seasonable times, to make any copy of or take any extract from the book required by the said act to be kept by the treasurer of such borough."

Power to take extracts from minutes, &c

23. "That after the passing of this act every application to the Court

Proceedings of

7 Will. 4 & 1 Vict. c. 78.

quo warranto against mayor, &c., to be commenced within twelve months.

of King's Bench for the purpose of calling upon any person to show by what warrant he claims to exercise the office of mayor, alderman, councillor, or burgess in any borough shall be made before the end of twelve calendar months after the election or the time when the person against whom such application shall be directed shall have become disqualified, and not at any subsequent time."

Applications may be made to Court of King's Bench for a mandamus to put a burgess on the roll (a).

24. "That it shall be lawful for any person whose claim shall have been rejected or name expunged at the revision of the burgess roll of any of the said boroughs to apply, before the end of the term then next following, to the Court of King's Bench for a mandamus to the mayor for the time being of that borough to insert his name upon the burgess roll, and thereupon for the court to inquire into the title of the applicant to be so enrolled; and if the court shall award such mandamus, the mayor shall be bound to insert the name upon the burgess roll, and shall add thereunto the words 'By order of the Court of King's Bench,' and shall subscribe his name to such words; and thereupon the person whose name shall be so added to the burgess roll shall be deemed a burgess, and entitled to vote and act as a burgess in all respects as if his name had been put upon the burgess roll by the mayor and assessors; and upon every such application the court shall have power to make such order with respect to the costs as to the court shall seem fit."

In case elections are not made within the time appointed by 5 & 6 Will. 4, c. 76, and this act, the corporations may proceed to such elections on the following day.

25. "That after the passing of this act, in case no election shall be made of any mayor, or any of the aldermen, councillors, or other corporate officers, in any borough named in the said schedules, upon the day or within the time appointed by the said act for regulating corporations or by this act for any such election, or such election being made shall afterwards become void, whether such omission or avoidance shall happen through the default of the officer or officers who ought to preside at such election, or by any accident or other means whatsoever, the corporation shall not thereby be deemed or taken to be dissolved or disabled from electing such mayor, alderman, or councillor, or other corporate officer, for the future, but in any case where no such election shall be made as aforesaid the election for any such mayor, alderman, councillor, or other corporate officer may be had, held, and proceeded with upon the day next after the day on which such election ought to have been made, unless such day shall happen to be on a Sunday, and then upon the Monday following, and every act necessary to be done in order to and for the completing such election shall and may be then done, and the same shall be as effectual and valid for all purposes as if the election had been made on the proper day appointed for that purpose."

Powers given to Court of King's Bench under 11 Geo. 1, c. 4, extended to elections under 5 & 6 Will. 4, c. 76, and this act (b).

26. "That after the passing of this act all the powers, authorities, and jurisdictions by an act of the eleventh year of the reign of his late Majesty King George the First, intituled 'An Act for preventing the Inconveniences arising from want of Elections of Mayors or other chief

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(a) Upon an application under this section, the Court will go into other objections to the title of the party besides those relied upon at the revision court. They are bound "to inquire into the title of the applicant." (*Reg.* v. *Harwich* (*Mayor*), 8 Ad. & E. 919; *Reg.* v. *Lichfield* (*Mayor*), 2 Gale & D. 10.

(b) Where an election to the office of mayor becomes void within the year, the Court has power under this section to issue a mandamus commanding a new election, and where there is a statutable incapacity in a person being twice elected to the office of mayor, the Court will consider the election as void *ab initio*, and will thereupon issue a mandamus commanding a new election; and such mandamus must be addressed to the mayor and burgesses, though there is legally no mayor. But if there had been a valid election and then the mayor had resigned, neither the 11 Geo. I. c. 4 nor this statute would be applicable. (*Reg.* v. *Pembroke*, (Corp.) 8 Dowl. P. C. 302).

Magistrates of Boroughs or Corporations being made upon the Days appointed by Charter or Usage for that Purpose, and directing in what Manner such Elections should be afterwards made,' given to his Majesty's Court of King's Bench in cases where no election shall be made of the mayor, bailiff or bailiffs, or other chief officer or officers of cities, boroughs, or towns corporate, upon the day or within the time appointed by charter or usage for that purpose, and that no election is made pursuant to the directions in that act prescribed, or such election being made shall afterwards become void as in that act mentioned, shall and the same are hereby extended to all cases in which no election shall be made of any mayor, alderman, councillor, or other corporate officer, or other person, to any corporate office on the day or within the time appointed for any such election under the provisions of the said act of the fifth and sixth years of the reign of his present Majesty for regulating corporations, or of this act; and the said Court of King's Bench is hereby empowered in all such cases to award a mandamus, and to cause such proceedings to be had thereupon, and to make such orders, and to do all other acts, matters, and things in respect thereof, as fully and effectually as the said court is now by law authorized in any other cases of mandamus for the election of any officers of corporations; and the election to be held under such mandamus shall be held and the proceedings thereon conducted within the borough in the same manner and under the like regulations and provisions as are in the said act of his Majesty King George the First enacted and provided."

7 Will. 4 & 1 Vict. c. 78.

27. "And be it declared and enacted, That every person, who at the time of the passing of the said act for regulating corporations was entitled to be admitted to the freedom of any borough named in the schedules to the last-recited act, shall be entitled to be admitted thereunto in like manner, and subject to the same conditions, restrictions, and limitations in all respects, as any person who shall have acquired his title to such freedom after the passing of the last-recited act."

Freemen may be admitted who were entitled before the passing of 5 & 6 Will. 4, c. 76.

28. "And whereas by an act passed in the last session of Parliament, intituled 'An Act for the better Administration of the Borough Fund in certain Boroughs,' it is enacted, that it shall be lawful for the council of any borough named in the Schedules (A.) and (B.) annexed to the first hereinbefore mentioned act, to execute from time to time any deed or obligation in the name of the body corporate whose council they are for securing repayment and satisfaction of any debt or obligation contracted by or on behalf of the said body corporate before the passing of the said act for regulating corporations; be it enacted, that any money borrowed by any such council for the purpose of being applied and which shall be actually applied in or towards satisfaction and discharge of any such pre-existing debt or obligation shall be deemed and taken to be, within the true intent and meaning of the said act of the last session of Parliament, a debt contracted by or on behalf of such body corporate before the passing of the said act for regulating corporations."

Money borrowed to discharge any pre existing debt to be deemed a debt contracted before the passing of 6 & 7 Will. 4, c. 104.

29. "And whereas the limits of boroughs in some cases extend over parts of parishes, townships, and places, parochial or otherwise, leaving the remainder of such parishes, townships, and places without the limits of such boroughs; and doubts have arisen whether the said act contains provisions under which the share which ought to be paid by the parts included within the limits of any borough of any borough rate to be levied in pursuance of the same act can be assessed and levied upon such parts exclusively of the remainder not within the limits of the borough; now be it enacted, that the overseer or overseers of the poor within any parish, township, or place whereof part lies within the limits of a borough as aforesaid, or any person or persons who, in pursuance of the powers contained by reference in the said act, shall be appointed to act as overseer or overseers, shall and may and is and are hereby empowered to levy and raise, in manner directed by the said act, upon such part exclusively of any parish, township, or place as is situate within the

Overseers may levy borough rates on parts exclusively of any parish within the limits of the borough.

7 Will. 4 & 1 Vict. c. 78.

limits of such borough, such sum or sums of money as shall be required to pay every borough rate (including rates already paid by such overseer or overseers or other person or persons) assessed and to be hereafter assessed under the authority in the said act, upon such part of any such parish, township, or place as lies within the limits of such borough." (See 7 Will. IV. & 1 Vict. c. 81, s. 3, *ante*, 101).

Certain matters of local jurisdiction made cognizable by justices of peace for the county, &c. 6 & 7 Will. 4, c. 103.

30. "That all matters cognizable by virtue of any local act of Parliament or otherwise by any justice of the peace or by the general or quarter sessions of the peace having jurisdiction within any place which, since the passing of the said act for regulating corporations, or of an act passed in the sixth and seventh year of the reign of his present Majesty, intituled 'An Act to make temporary Provision for the Boundaries of certain Boroughs,' has ceased, or which under any future act may cease to be within and to be part of any borough or the liberties thereof, shall be cognizable by the justices of the peace or the general or quarter sessions of the county, riding, or division, liberty or jurisdiction, within which such place is situate, in the same manner and subject to the same provisions as the same were within the jurisdiction of the justices of the peace for that borough or place or of the general or quarter sessions of the same."

Offences against local acts made cognizable by borough justices.

31. "That after the passing of this act all offences committed within any borough, or the precincts thereof, against the provisions of any local act of Parliament, shall be cognizable by the justices of such borough, and such justices shall possess all the powers and jurisdiction with respect to such offences which were heretofore possessed by the justices of any county, riding, division, liberty, or jurisdiction, by virtue of any such local act: provided always, that in every case in which imprisonment might be awarded for any such offence, or to enforce payment of any penalty imposed by any such act, such imprisonment may be awarded to take place in any gaol to which the justices of that borough have power to commit offenders."

Before whom courts of record may be holden.

32. "That every court of record for the trial of civil actions within any borough named in the schedules to the said act for regulating corporations, may, in the absence of the recorder, be holden for all purposes within the competency of the said court (except the trial of issues in law or in fact) before any person whom the recorder shall from time to time appoint for that purpose under his hand and seal, such person being a barrister at law or attorney of five years' practice."

Orders, affidavits, &c., now made by or before the recorder, may be made by or before the registrar in absence of the recorder.

33. "That all rules, orders, and affidavits, and all other matters and things (except the trial of issues in law or in fact) in any way relating to the business of any borough court of record not regulated by local act of Parliament, of which the recorder or his deputy is or hereafter may become the judge or now acts as assessor, which must now by law be made, sworn, or done by or before such recorder or such deputy, or other the judge of the said court, may be made, sworn, or done, either in court or out of court, in the absence of the said recorder or his deputy, by or before the registrar of such court, or such other person, being a barrister at law or attorney of five years' standing, as the recorder shall appoint under his hand and seal."

Recorders to be sole judges of borough courts in which they act as assessors. 6 & 7 Will. 4, c. 105.

34. "That in every such borough court of record in which the recorder acts as assessor he shall after the passing of this act be the sole judge; and that the provisions of this act and of the said act for regulating corporations, and also of an act passed in the last session of Parliament, intituled 'An Act for the better Administration of Justice in certain Boroughs,' shall extend to all such courts of which the recorder now acts as assessor, or of which he shall hereafter become the judge, any thing in the last-mentioned acts or either of them to the contrary notwithstanding."

Jurisdiction of court of record may be extended.

35. "That if his Majesty shall be pleased, upon the joint petition of the council of any borough named in either of the schedules to the said act for regulating corporations, and of the justices of the adjoining

county, riding, parts or division of a county, in quarter session assembled, to grant that the jurisdiction of any court of record for the trial of civil actions, or of any court of requests or of conscience for the recovery of small debts within such borough, shall be extended over any district adjacent to the said borough, and within the jurisdiction of such quarter sessions, such as to his Majesty, with the advice of his privy council, shall seem fit, the jurisdiction of every such court respectively shall be extended according to the tenor of the grant; and all the powers and provisions contained in the said act for regulating corporations, and in an act passed in the last session of Parliament, intituled 'An Act for the better Administration of Justice in certain Boroughs,' and in this act, relating to any such court, shall extend to the whole district comprised within such extended jurisdiction."

7 Will 4 & 1 Vict. c. 78.

36. "And whereas by the said act for regulating corporations it is provided that no person shall be summoned to serve as a juror at the court of session of the peace, or court of record, in any borough named in either of the schedules to the said act, oftener than once in one year; be it enacted, that nothing in the said act contained shall prevent or excuse any person, qualified and liable to serve on any such jury, from being summoned a second time in one year in case every person qualified and liable so to serve shall have been summoned once during that year."

Jurors may be summoned more than once yearly when all who are qualified have been once summoned.

37. "That the several councils of the cities of Canterbury, Lichfield, and Lincoln, and of every other borough named in the schedules to the said act for regulating corporations, shall have all the powers for building, enlarging, and repairing any gaol or house of correction belonging to their city or borough respectively which the justices having the government or ordering of any gaol or house of correction in any city or borough within the provisions of an act passed in the fourth year of the reign of his late Majesty King George the Fourth, intituled 'An Act for consolidating and amending the Laws relating to the building, repairing, and regulating of certain Gaols and Houses of Correction in England and Wales,' or of an act passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled 'An Act for amending an Act of the last Session of Parliament relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction, and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales,' had in general or quarter sessions before the passing of the said act for regulating corporations; subject nevertheless to any alteration made in the last-recited acts, or either of them, by an act made in the fifth and sixth years of his Majesty, intituled 'An Act for effecting greater Uniformity of Practice in the Government of the several Prisons in England and Wales, and for appointing Inspectors of Prisons in Great Britain,' and all things by any act of Parliament provided to be done at any general or quarter sessions of the peace, in relation to the building, enlarging, or repairing any such gaol or house of correction, shall be done at some quarterly meeting of the council of the city or borough: provided always, that before the building, enlarging, or repairing any such gaol or house of correction the expediency thereof shall first be certified under the hand of the recorder or other judge of such city or borough: provided also, that all rules and regulations made for the government of any prisoners confined in any such gaol or house of correction shall be approved by two or more justices acting in and for that city or borough before they shall be transmitted to the secretary of state."

Councils of boroughs to have same powers as justices in general or quarter sessions had in relation to building, &c. gaols, &c.

4 Geo. 4, c. 64.

5 Geo. 4, c. 85.

5 & 6 Will. 4, c. 38.

38. "That all the powers of regulation which before the passing of the said act for regulating corporations were possessed by the justices having the government or ordering of any such gaol or house of correction, and all things by any act of Parliament provided to be done at any general or quarter sessions of the peace in relation to the regulating of any such gaol or house of correction, shall, subject to any such alteration as afore-

Justices of cities or boroughs to regulate gaols, &c. therein at quarterly sessions.

7 Will. 4 & 1 Vict. c. 78.

said, be exercised or done by the justices of the city or borough to which such gaol or house of correction shall belong, and for that purpose the justices shall hold a quarterly session at the usual times of holding quarterly sessions of the peace; provided that no order made by the justices in pursuance of these powers which shall require the expenditure or payment of any money shall be of force until confirmed by the council of that city or borough."

Mayor, &c. not to be interested in any contract for building, &c. gaols, &c. (a)

39. "That it shall not be lawful for any mayor, alderman, councilman, or other officer of a corporation to be interested or concerned or employed, directly or indirectly, as an architect, builder, artist, mechanic, workman, merchant, trader, or otherwise howsoever in any part of the work to be done or materials to be supplied at any such gaol or house of correction, or in any contract whatever relating thereto; and if any one holding such office shall be so interested, concerned, or employed in such work or contract as aforesaid, he shall thenceforward be disqualified from continuing to hold such office, and also from being thereafter elected or appointed to fill any corporate office within any such city or borough." (5 & 6 Will. IV. c. 76, s. 28.)

Borough gaol may be built beyond the limits of the borough.

40. "That it shall be lawful for the mayor, aldermen, and burgesses of any borough, by their council, to contract for the purchase of, and to have and hold to them and their successors, any lands not exceeding in the whole five acres, either within or beyond the limits of the borough, and to build thereon a town hall, council house, police office, gaol, or house of correction for the borough; and any such gaol or house of correction, although built beyond the limits of the borough, may be declared by a resolution of the council, and upon such resolution shall be taken to be, the gaol or house of correction of the borough, and shall be within the same jurisdiction and shall be governed and regulated in like manner as if within the limits of the borough."

Goals, &c. under county jurisdiction previous to 6 & 7 Will. 4, c. 106, excluded from the provisions of that act.

41. "And whereas by the extension of the boundaries of certain boroughs, cities, and places, the county gaols, court houses, depôts for militia arms, and other public edifices and offices of counties have been included within the boundaries of those cities or boroughs, and are thereby subject to the jurisdiction of such cities or boroughs and of the sheriffs and other municipal authorities thereof; in remedy whereof, be it enacted, that all county gaols, courts, depôts for arms, and all lands, buildings, easements, and appurtenances thereunto belonging, which before the passing of the act passed in the last session of Parliament to make temporary provision for the boundaries of certain boroughs, or the authorized extension of the boundaries of any borough since the passing of that act, were in, of, or belonging to any county, shall be taken to be and considered and shall remain part and parcel of such county, and under the exclusive jurisdiction of the authorities of such county, as if the said last-mentioned act had not passed."

Certain borough debtors and prisoners in contempt may be removed to the county gaol.

42. "That in every case in which by virtue of any contract made between the council of any borough and the justices of any county, riding, parts, or division of a county, liberty, or jurisdiction, according to the provisions of the said act for regulating corporations, the gaol belonging to such county, riding, parts, or division of a county, liberty, or jurisdiction shall be used as the gaol of such borough, prisoners for debt or in contempt arrested in any such borough under any process from any court may be taken and removed from such borough and confined in that part of such gaol which is appropriated to debtors, and such removal shall not be taken to be an escape: provided always, that every such prisoner shall still be taken to be within the legal custody of the person or persons in whose custody he would have been if imprisoned within the borough gaol, and the sheriff of such county, riding,

(a) See further as to disqualifications for corporate offices 5 & 6 Vict. c. 104, *post*, Addenda to the present title.

parts, or division of a county, liberty, or jurisdiction shall not be answerable for the safe custody of any such prisoner: provided also, that it shall be lawful for the person or persons in whose custody such prisoner would have been if imprisoned within the borough gaol to take such security from the gaoler or keeper of the gaol to which any such prisoner shall be so removed, for the safe custody of all such prisoners, as shall be agreed on between the council and justices aforesaid."

7 Will. 4 & 1 Vict. c. 78.

43. "And whereas an act was passed in the last session of Parliament, intitulad 'An Act for the better Administration of the Borough Fund in certain Boroughs,' providing among other things that accounts of the receipt and expenditure on account of the mayor, aldermen, and burgesses of such boroughs should be sent to one of his Majesty's principal secretaries of state, and be laid before both houses of Parliament; be it enacted, that every such account shall be made up to the last period of audit of the said receipt and expenditure, and not further or otherwise."

Period to which accounts shall be made up.

44. "And whereas it is expedient to give all persons interested in the borough fund of every borough a more direct and easy remedy for any misapplication of such fund: be it therefore enacted, that any order of the council of any borough for the payment of any sum of money from or out of the borough fund of any borough may be removed into the Court of King's Bench by writ of certiorari, to be moved for according to the usual practice of the said court with respect to writs of certiorari; and that such order may be disallowed or confirmed upon motion and hearing, with costs, according to the judgment and discretion of the said court."

Orders for payment of money may be removed into the Court of King's Bench by certiorari (a)

45. "That any stocks, funds, or public securities which may be standing in the books of the governor and company of the Bank of England, or of any other public company or society, in the name of the mayor, aldermen, and burgesses of any borough, either under their present or under any former style or title of incorporation, and the dividends and interest thereof, and all bonuses and accretions thereunto, which shall belong to the body corporate of such borough, without being subject to any trust for charitable purposes, may be transferred by and paid to such person or persons as the council of the said body corporate shall appoint by an instrument in writing under the corporate seal of the borough; provided that such instrument of appointment shall be signed and sealed also by the clerk to the charitable trustees of the borough, who is hereby directed, upon request, to sign and seal the same."

Manner of transferring corporate property standing in the bank books, &c.

46. "That any stocks, funds, securities, and monies standing as aforesaid in the name of any such body corporate, which shall belong to the charitable trustees of the borough solely upon some charitable trust or trusts, may be transferred by and paid to such person or persons as shall be appointed under the hands and seals of the greater part of the trustees, which appointment shall be attested under the hand and seal of the said clerk, provided that such instrument as last aforesaid shall

Manner of transferring charitable property standing in the bank books, &c.

(a) This section amounts to a partial repeal of 5 & 6 Will. 4, c. 76, s. 132, (*ante*, 119), and has been held to be retrospective in its operation. Under that section, therefore, the town council may apply for a certiorari to remove an order of a previous council. And where a town council ordered a payment from the borough fund, for defraying the expenses of opposing two rules, one for a quo warranto, against a party who had been declared duly elected a councillor and had accepted the office, for exercising that office; the other for a criminal information against an alderman for the borough, for alleged misconduct at an election of councillors. The payments were made by the treasurer, and his accounts audited; afterwards stat. 7 Will. 4 & 1 Vict. c. 78, passed. The court, under this section, upon the affidavit of a burgess, who applied in pursuance of the instructions of a subsequent town council, granted a certiorari to bring up the orders of the previous town council, and quashed them. (*Reg.* v. *Bridgewater* (*Council*), 10 Ad. & E. 281).

7 Will. 4 & 1 Vict. c. 78.

be also sealed with the corporate seal of the borough, and the mayor of the borough is hereby required, upon request, to cause the seal of the borough to be affixed to such instrument of nomination."

By what authority and to whom dividends of charitable and corporate property standing in the bank books, &c., shall be paid.

47. "That the dividends and interest of any stocks, funds, securities, and monies standing as aforesaid in the name of any such body corporate which shall belong partly to the said body corporate, but subject to some charitable trust or trusts, may be paid to such person or persons as shall be authorized to have the same paid to him or them, by an instrument in writing under the corporate seal of the borough, and appointed under the hands and seals of the greater part of the trustees, which appointment shall be attested under the hand and seal of the said clerk."

Receipts for monies, and application thereof.

48. "That in every case the receipt of the person or persons authorized to give a receipt to the said company or society, by any instrument under the corporate seal of the said borough, and also signed and sealed by the clerk to the charitable trustees, shall be an effectual discharge to the said company or society; and all monies so paid shall be applied to the uses and in the manner provided by the said act; that is to say, so much of the said monies as may be held on charitable trusts shall be paid over to the charitable trustees of the said borough, and so much as the said body corporate shall be entitled to beneficially shall be paid over to the treasurer of the borough, and applied as directed by the said act as part of the borough fund; but no such public company or society as aforesaid shall be bound to see to the due application thereof, or to the validity of the appointment of the clerk to the charitable trustees, or to the execution of any such instrument by any of the said trustees, or to inquire whether or not the said stocks, funds, securities, or monies are charged with or held upon any charitable trust; and every person authorized to receive any monies under this act shall account to the council and to the charitable trustees respectively for all monies so received by him, and the council and trustees respectively shall have the same remedies against any such person refusing or wilfully neglecting so to account as are provided by the said act for regulating corporations, in the case of a treasurer or other officer appointed by the council refusing or wilfully neglecting to account, as provided by the said act, during the continuance of his office, or within three months after the expiration of his office."

Powers of the act 5 & 6 Will. 4, c. 76, may be granted by the crown to towns or boroughs, though not corporate.

49. "That if the inhabitant householders of any town or borough in England or Wales shall petition his Majesty to grant to them a charter of incorporation, it shall be lawful for his Majesty, by any such charter, if he shall think fit by the advice of his privy council to grant the same, to extend to the inhabitants of any such town or borough within the district to be set forth in such charter all the powers and provisions of the said act for regulating corporations, whether such town or borough be or be not a corporate town or borough, or be or be not named in either of the schedules to the said act: provided nevertheless, that notice of every such petition, and of the time when it shall please his Majesty to order the same be taken into consideration by his privy council, shall be published in the London Gazette one month at least before such petition shall be so considered, but such publication shall not need to be by royal proclamation."

The following case has been decided with respect to the powers vested in her Majesty in council by this section:—A petition, which had been agreed upon at a meeting of the rate-payers of the parliamentary borough of Manchester, convened by public advertisement, and which was in fact attended by 1000, and which petition was afterwards signed by 4000 inhabitant householders of the borough, was presented to her Majesty, praying for the grant of a charter of incorporation to the inhabitants of such borough, under the provisions of the stat. 1 Vict. c. 78, s. 49. Afterwards, and before the day appointed for this petition being taken into consideration by the privy council, a counter petition, signed

by 6000 of such inhabitant householders, was presented to her Majesty, praying her not to grant such charter. The whole number of inhabitant householders of the borough amounted to 48,000:—Held, (on error in the Exchequer Chamber)—first, that the second petition did not necessarily, in point of law, deprive her Majesty of the power to grant such charter upon the first petition; but that, whether the first petition was, under all the circumstances, the petition of the inhabitant householders of the borough, so as to authorize the exercise of the powers conferred by the 1 Vict. c. 78, s. 49, was a question of fact for a jury; and that the determination of the privy council to advise the crown to grant the charter upon such petition was not conclusive of its validity. Secondly, that the grant of such charter of incorporation is an exercise of the common-law prerogative of the crown, although it also extends to the new corporation the powers of the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, which the crown has power to do only by virtue of the 1 Vict. c. 78, s. 49. Thirdly, that such charter may be granted to a part only (to be defined therein) of the borough, from the whole of which the petition emanated, and need not be conferred upon the inhabitant householders of the whole borough. Fourthly, that the crown may, by its common-law prerogative, appoint, in such charter, the number, and set out the limits, of the wards in the new borough. And, lastly, that the crown may also, by such charter, delegate to an individual the power of appointing the first members of such corporation; or may, at all events, appoint a person to ascertain the individuals who compose the class to whom the charter is granted. (Lord *Denman*, C. J., and *Williams*, J., dissentientibus). (*Rutter* v. *Chapman*, 8 *Mee. & W.* 1).

7 Will. 4 & 1 Vict. c. 78.

Where a charter of incorporation had been granted under this section, the court discharged a rule for quo warranto information at the instance of a private relator against a coroner appointed under the charter, on the ground that all the objections taken to his title applied equally to the charter itself, and that the charter could not be attacked through him. (*Reg.* v. *Taylor*, 3 *Per. & D.* 652; 11 *Ad. & E.* 505).

Business to be transacted at general or quarter sessions for the counties, &c., in which boroughs are situate.

50. "That, in all boroughs and places where general or quarter sessions of the peace have under and by virtue of the said recited act ceased or been discontinued to be holden, all such business, matters, and things which, under or by virtue of any general or local act of Parliament, or any usage or custom, ought or were usually heard, decided, or transacted at such general or quarter sessions by the justices of the peace, with the assistance of any juries there assembled, shall and may hereafter be heard, decided, and transacted by the general or quarter sessions of the peace for the counties, ridings, or divisions, liberties, or jurisdictions in which such boroughs are situate, and by the justices of the peace and juries there assembled respectively."

5 & 6 Vict. c 111.

Doubts having arisen as to the validity of certain charters granted in pursuance of the provisions of this and the former act, the 5 & 6 Vict. c. 111 [12th August, 1842] was passed, which, after reciting that since the passing of an act passed in the sixth year of the reign of his late Majesty, intituled "An Act to provide for the regulation of Municipal Corporations in England and Wales," charters of incorporation have been granted to certain boroughs in England, in pursuance of the provisions of the said act, and of the acts afterwards passed for amending the said act, and that doubts have arisen respecting the validity of the said charters, and it was expedient that such doubts be removed, enacts, "That the said several charters of incorporation, and also all grants of separate courts of sessions of the peace, issued or granted to any of the said boroughs, and all acts or proceedings done or had in pursuance thereof respectively before the passing of this act, shall be deemed good and lawful from the time of such several grants, acts, and proceedings respectively."

5 & 6 Will 4, c. 76.

Confirmation of certain charters and proceedings in pursuance thereof.

5 & 6 Vict. c. 111.

Compensation to certain officers.

2. "That every officer of any such borough, or of any county or any division of a county in which any such borough is situated, who was in any office of profit at the time of the granting of any such charter of incorporation, or of any grant afterwards made by his late Majesty or by her Majesty before the passing of this act, whose office shall have been abolished, or who shall have been removed from his office, or who shall have been deprived of any part of the fees and emoluments of his office, in consequence of any such grant, shall be entitled to have an adequate compensation, to be assessed by the council and paid out of the borough fund, for the salary, fees, and emoluments of the office which he shall so cease to hold, or for such part thereof as he shall have been so deprived of, regard being had to the manner of his appointment to the said office and his term or interest therein, and all other circumstances of the case; and all the provisions of the first-recited act relating to the claim of any corporate officer for compensation, and to the manner of determining and securing the amount of such compensation, shall apply severally to the officers hereby indemnified: provided always, that the statements to be delivered to the town clerks of the said several boroughs by the said officers shall set forth the fees and emoluments in respect whereof they shall claim compensation during five years next before the several times when the profits of their several offices were first affected by any of the said grants respectively."

6 & 7 Will. 4, c. 103 (a).

5 & 6 Will. 4, c. 76.

Part of the recited act repealed.

New provision as to boundaries of boroughs, &c.

2 & 3 Will. 4, c. 64.

By stat. 6 & 7 Will. IV. c. 103, intituled "An Act to make temporary Provision for the Boundaries of certain Boroughs," [20th August, 1836], reciting "Whereas by the provisions of an act passed in the last session of Parliament, intituled 'An Act to provide for the Regulation of Municipal Corporations in England and Wales,' the boundaries of certain boroughs named in the schedules (A.) and (B.) to the said act annexed were made to include all the liberties of such boroughs and large tracts of land beyond the limits of the towns, and which ought not to be included therein;" be it therefore enacted, "That so much of the said act for regulating corporations as provides that the metes and bounds of every borough and county named in the said act shall include the whole of the liberties of such borough and county by land and by water is hereby repealed; and that, notwithstanding any thing in the said act contained, no part of any county, or of the liberties of any borough, town, or city named in the first sections of the schedules (A.) and (B.) annexed to the said act for regulating corporations, which before the passing of the said act was not part of such borough, town, or city, or within the parliamentary boundary of such borough, town, or city, shall be taken to be within the metes and bounds of any such borough, town, or city, or within the county of such borough, town, or city, or to be within the jurisdiction of the justices of such borough, town, or city, or county of a borough, town, or city; and that no part of any county, or of the liberties of any borough, town or city named in the second section of the said schedules (A.) and (B.), which was not part of such borough, town, or city before the passing of an act passed in the 2nd and 3rd year of his Majesty, intituled 'An Act to settle and describe the Divisions of Counties, and the Limits of Cities

(a) The construction put upon this act, as to the mode of determining the present boundaries of cities and boroughs, seems to be, that those parts of each county of a city or borough which were in fact the town or city itself, subject to its ordinary municipal government, bearing its ordinary municipal burdens, and entitled to its ordinary municipal privileges before the passing of the 2 & 3 Will. IV. c. 64, are now alone to be deemed liable to the municipal burdens imposed by the 5 & 6 Will. IV. c. 76. (*Mayor of Coventry* v. *Lythall*, Exch. T. Vac. 1842; and see *Rex* v. *Gloucestershire* (*JJ.*), 4 Ad. & E. 689).

and Boroughs, in England and Wales, in so far as respects the Election of Members to serve in Parliament,' shall, for the purposes of the said act passed in the last session of Parliament, be taken to be within the metes and bounds of any such borough, town, or city, or within the county of such borough, town, or city, or to be within the jurisdiction of the justices of such borough, town, or city, or county of a borough, town, or city, but every such part, until Parliament shall otherwise direct, shall be taken to be within and to be subject to the same jurisdiction as the county, riding, parts, or divisions of a county, other than a county of a borough, town, or city wherein such part is situated, or with which it has the longest common boundary: provided also, that all the provisions of the said act for regulating corporations concerning the liability of the rate-payers of any place or precinct which under the provisions of this act shall not be included within any such borough, town, or city, or county of a borough, town, or city, to any debt to which the rate-payers of such borough, town, or city, or county of a borough town, or city, were liable to contribute before the passing of the said act for regulating corporations, shall be applicable to such place or precinct as if the same had not been included within the metes and bounds of such borough, town, or city under the provisions of the said act for regulating corporations; provided also, that no election of any mayor, alderman, councillor, auditor, or assessor heretofore made, or any other proceeding whatsoever, in any such borough, town, or city, since the 25th day of December last, shall be liable to be questioned after the passing of this act by reason that any such part of any county, or liberties of any borough, town, or city, may or may not have been taken to be part of such borough, town, or city under the provisions of the said act."

6 & 7 WILL. 4, c. 103.

Proviso as to the liability of rate-payers.

Proviso as to the election of mayor, &c.

2. "Provided always, and be it enacted, That notwithstanding anything in this act contained, the borough of Sunderland, for the purposes of the said act passed in the last session of Parliament, and until Parliament shall otherwise direct, shall consist of the parish of Sunderland, the townships of Monkwearmouth and Monkwearmouth Shore, and so much of the townships of Bishop Wearmouth and Bishop Wearmouth Panns as is included within a circle of one mile from the centre of Wearmouth Bridge."

Boundaries of the borough of Sunderland.

3. "The division of every borough, town, and city into wards by the barrister or barristers appointed in pursuance of the provisions of the said act for regulating corporations shall not be annulled or vitiated by the exclusion of any ward or wards, or any part of any of the said wards which shall be excluded from such borough, town, or city by this act, but the said division shall remain in all other respects in force until Parliament shall otherwise direct, as if the ward or wards, or part of a ward or wards, so excluded from the borough, town, or city, had not been at any time included therein: provided nevertheless, that if any borough, town, or city shall have been so divided into wards that the whole of any one or more wards shall consist wholly of a district excluded from such borough, town, or city by this act, the barrister or barristers who originally divided the borough, town, or city into wards shall, as soon as conveniently may be after the passing of this act, assign the councillors who were chosen in such ward or wards to the remaining wards of the borough, town, or city, or such of them as he or they shall select, upon the same principles, or as nearly as may be, in his or their judgment, as were provided by the said act for the guidance of the barristers in their assignment of councillors to each ward, and thenceforth, and until Parliament shall otherwise direct, the number of councillors in each of the remaining wards shall be the number originally assigned to such ward by the barrister or barristers, with the addition of the number so assigned to it by the barrister or barristers under this act, and the councillors so assigned under this act to each ward shall thenceforth be deemed to have been elected in the ward to which they shall have been respectively so assigned, and shall go out of

The division of boroughs into wards by the barristers not to be affected by the exclusion of any ward or part of a ward.

If a borough has been so divided that the whole of a ward shall consist of a district excluded by this act, a new assignment of councillors to be made by the barrister until parliament shall otherwise direct.

6 & 7 Will. 4, c. 103.

office, and vacancies among them shall be filled at the same time and in the same manner as if the burgesses of the ward by whom they were originally elected had been burgesses of the ward to which they shall have been so assigned."

Local acts for the relief of the poor not to be affected.

4. "Nothing contained in the said act for regulating corporations shall be construed to affect any local act heretofore passed for the relief and management of the poor, or to alter the district comprised within the provisions of any such local act."

Nothing herein to affect the assessments of the land or assessed taxes, or the jurisdiction of the commissioners.

5. "Nothing contained in the said act for regulating corporations shall be construed to affect or alter the assessments of the land-tax or assessed taxes, or to extend or diminish the jurisdiction of any commissioners of land and assessed taxes; but that all manors, lands, tenements, and hereditaments, and all parishes and parts of parishes, and places, shall continue to be charged as heretofore towards the land-tax charged upon the county or other district of which they were a part before the passing of the said recited act, and to be subject in that behalf to the jurisdiction of the commissioners of the same county or other district as they would have been if the said recited act had not been passed."

Berwick upon-Tweed declared a county to all intents but for parliamentary elections.

6. "And be it declared and enacted, That the borough and town of Berwick-upon-Tweed, within the limits assigned to it by the said act, or hereafter to be assigned to it by authority of Parliament, shall be a county of itself to all intents and purposes, except only so far as relates to the return of a member or members to serve in Parliament; and that the provisions of the act passed in the third and fourth years of his Majesty, intituled 'An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple modes of Assurance,' and the modes of assurance therein provided shall extend and apply to lands locally situated in the said borough, town, and county, any law, statute, custom, or usage to the contrary notwithstanding."

6 & 7 Will. 4, c. 104.

5 & 6 Will. 4, c. 76.

By 6 & 7 Will. IV. c. 104, intituled "An Act for the better Administration of the Borough Fund in certain Boroughs," [20th August, 1836], reciting, "Whereas by an act passed in the last session of Parliament, intituled 'An Act to provide for the Regulation of Municipal Corporations in England and Wales,' provision was made for the payment of the rents and profits of the real and personal estate of the mayor, aldermen, and burgesses of certain boroughs named in the schedules (A.) and (B.) to the said act annexed, and also for the payment of certain penalties to a fund to be called in each case 'the Borough Fund' of that borough: and whereas certain difficulties have occurred in putting the said act into execution, and certain penalties have been imposed, which ought not to be imposed, for the benefit of the said borough fund:" be it therefore enacted, "That from and after the passing of this act it shall be lawful for the council of any borough named in the said schedules to execute from time to time any deed or obligation in the name of the body corporate whose council they are, for securing repayment and satisfaction of any debt or obligation contracted by or on behalf of the said body corporate before the passing of the said act for regulating corporations." (*a*).

Extending the power of disposition given to the council as to certain demises; and the power allowed to be exercised over the lands, &c., with the approbation of the treasury.

2. "The power of disposition given to the council of any body corporate in the instances of demises for seventy-five years, authorized by the said act, shall extend to the demise or lease thereof, either at a reserved rent or a fine, or both, as the council shall think fit; and the power of disposition allowed by the said act over the lands, tenements, and hereditaments of such body corporate, to be exercised with the approbation of the lords commissioners of his Majesty's treasury or any three of them, shall extend to the disposition of such lands, tene-

(*a*) See 7 Will. IV. & 1 Vict. c. 78, s. 28, *ante*, p. 129.

ments, and hereditaments, with such approbation as aforesaid, whether by way of absolute sale, or by way of exchange, mortgage or charge, demise or lease, and to every other disposition of the same whatsoever which shall be so approved of as aforesaid." 6 & 7 Will. 4, c. 104.

3. "Nothing in the said act contained shall be construed to restrain the treasurer of any borough, under the direction of the council, from applying the proceeds of the sale of any advowson, or right of nomination or presentation to any benefice or ecclesiastical preferment, directed by the said act, which shall have been paid to him, or any part thereof, towards the liquidation of any debt contracted before the passing of the said act by the body corporate named in the said schedules in conjunction with such borough." Treasurer of borough may apply proceeds of sales as herein mentioned.

4. "And whereas by the said act it is provided, that no person assigned to keep the peace within any borough, town or city under the provisions of the said act, shall by virtue of such assignment act as a justice of the peace in making or levying any county rate, or rate in the nature of a county rate; be it enacted, that notwithstanding any thing in the said act contained, it shall be lawful for any such person to act as a justice of peace in levying any county rate, or rate in the nature of a county rate, which shall have been legally made previously to the 1st day of May, 1836." Persons assigned to keep the peace in any borough may act as justices in levying county rates made before May, 1836.

5. "In any case in which, for the purpose of levying any county rate, a warrant might be lawfully issued by one or more justices of the peace, a warrant may be lawfully issued in the like case by the mayor of any borough named in the said schedules, under his hand and the corporate seal of the said borough, whether the matter of such warrant relates to the borough rate or to the watch rate; and that in every case in which in a matter relating to the county rate a warrant is required to be directed to or issued by a high constable, such warrant may in a like matter relating to the borough rate or watch rate be directed to or issued by the high constable of the borough, or any borough officer of the like description, or by any person or persons who may have been or may hereafter be appointed by the council of the borough for the purpose of collecting the said borough rate or watch rate, or either of them." Mayor may issue his warrant for levying borough rate, &c.

6. "No burgess of any borough named in the said schedules shall be deemed an incompetent witness in any suit or proceeding at law or in equity by reason of his being a member of such body corporate, or interested in the borough fund of any borough." (See 5 & 6 Will. IV. c. 76, s. 128, *ante*, 118). Burgesses competent witnesses.

7. "Notwithstanding any thing in the said act contained, no person enrolled on the burgess roll for the time being of any borough named in the schedules to the said act, and who shall act as mayor, alderman or councillor, auditor or assessor, of such borough, shall be liable to any penalty for so acting on the ground that he was not entitled to be on the burgess list of such borough." Mayor, &c., if enrolled on burgess roll not liable to penalty for so acting.

8. "And whereas no provision is made in the said act for resigning any corporate office on payment of a fine or otherwise; be it enacted, that every person elected into any corporate office in any of the said boroughs may at any time resign such office on payment of the fine which he would have been liable to pay for non-acceptance of the same office; provided that no person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office in any borough by reason of his refusal on conscientious grounds to take any oath or make any declaration required by the said act, or to take upon himself the duties of such office. Corporate offices may be resigned on payment of the fine (a). Proviso for persons refusing on conscientious grounds.

9. "Nothing contained in the said act for regulating corporations shall be construed to alter or affect the right of any person claiming discharge or exemption from tolls levied in whole or in part by or to the use of Reservation of exemption from tolls enjoyed by persons in virtue

(a) See note (a) to sect. 72 of the 5 & 6 Will. IV. c. 76.

6 & 7 Will. 4, c. 104.

of other than corporate rights.

any body corporate by virtue of any title to such discharge or exemption other than as an inhabitant of any borough, or as a citizen, freeman or burgess, or as a member by any name whatsoever of any body corporate named in the said schedules, or as the widow or kindred of any such inhabitant, citizen, freeman, burgess or member of such body corporate."

Accounts of corporations to be transmitted to secretary of state, and abstracts laid before Parliament.

10. "The council of each borough, town or city named in the said schedules, or in which a body corporate of mayor, aldermen and burgesses may be created under the provisions of the said act, shall, before the 1st day of March in each year, transmit to one of his Majesty's principal secretaries of state a statement of all monies received and expended on account of the mayor, aldermen, and burgesses of that borough, town, or city within the year preceding, which statement shall be prepared in such form and manner as the secretary of state shall direct, and such accounts shall refer to the year ended upon the 1st of January of the year in which such account is hereby required to be so transmitted; and an abstract of such statements and accounts, under general heads, shall be laid before both houses of Parliament during their sitting in the same year in which they are hereby required to be transmitted as aforesaid." (See 5 & 6 Will. IV. c. 76, s. 103, *ante*, 107).

6 & 7 Will. 4, c. 105.

5 & 6 Will. 4, c. 76.

County justices may contract with council of a borough in which there is a sufficient gaol for the committal of county prisoners thereto (*a*).

5 Geo. 4, c. 85.

If there is a separate court of quarter sessions in the borough, such offenders may be tried there.

By stat. 6 & 7 Will. IV. c. 105, intituled "An Act for the better Administration of Justice in certain Boroughs," [20th August, 1836], reciting, "Whereas by reason of certain defects in an act passed in the last session of Parliament, intituled 'An Act to provide for the Regulation of Municipal Corporations in England and Wales,' the administration of civil and criminal justice is injuriously hindered and delayed in certain boroughs named in the schedules (A.) and (B.) to the said act annexed:" be it therefore enacted, "That the justices of the peace of any county, riding, parts, or division of a county shall have the same powers of contracting with the council of any borough, town, or city named in the said schedules in which it shall have been made to appear to the satisfaction of one of his Majesty's principal secretaries of state that there is a gaol or house of correction fit for the confinement of prisoners, for the conveyance to and support and maintenance in such gaol or house of correction of prisoners committed thereto by any justice or justices of such county, ridings, parts, or division of a county, which the council of any other borough have with respect to prisoners committed to such gaol or house of correction from such last-mentioned borough; and all the provisions of an act made in the fifth year of his late Majesty, intituled 'An Act for amending an Act of the last Session of Parliament relating to the building, repairing, and enlarging of certain Gaols and Houses of Correction, and for procuring Information as to the State of all other Gaols and Houses of Correction in England and Wales,' shall extend, or as nearly as may be, to all such contracts; and in case his Majesty shall have granted to the borough, town, or city in which such gaol or house of correction shall be situated a separate court of quarter sessions of the peace, such offenders may be tried and sentenced by such court for all offences of which the court has cognizance, and punished accordingly, and all the provisions of the last-recited act made in the fifth year of his late Majesty shall extend, as nearly as may be, to the trial and punishment of such offenders, and to all acts necessary for such trial or consequent thereon."

Power to try prisoners at borough sessions, although committed for trial under contract to a county prison

2. "And whereas it is expedient to enlarge the powers given to the councils of the boroughs named in the said act for the regulation of municipal corporations, in which a separate court of quarter sessions of the peace shall be holden, of contracting with the justices of the peace having authority or jurisdiction in and over any gaol or house of cor-

(*a*) See 5 & 6 Will. IV. c. 76, ss. 105, 106, *ante*, p. 108.

rection of the county, riding, or division wherein such borough is situated or whereunto it is adjacent, for the conveyance, support, and maintenance in such last-mentioned gaol or house of correction of prisoners committed thereto from such borough; be it enacted, that it shall be lawful to try any such prisoner at the borough court of quarter sessions of the peace, and for the proper officer of such borough to direct the removal of such prisoner for trial, and to do all other acts necessary for such trial or consequent thereon, notwithstanding that the gaol or house of correction so receiving under contract a prisoner committed for trial may be situate more than two miles from the usual place of trial of such borough."

more than two miles from the borough

3. "And whereas it is by the said recited act enacted, that no recorder or person assigned to keep the peace within any such borough shall be capable of acting as recorder or justice of the peace within such borough until he shall have taken the oaths provided to be taken by justices of the peace, except the oath as to qualification by estate; be it enacted, that all oaths so required to be taken by any such recorder or person assigned to keep the peace may be taken before the mayor or any two aldermen or councillors of the said borough, without suing out or obtaining any special dedimus or other commission or authority for administering such oaths."

Oaths required to be taken by recorder, &c. may be taken before the mayor or two aldermen or councillors.

4. "And whereas by the said act it is provided, that the mayor of every borough named in the said schedules (A.) and (B.) shall continue in his office for one whole year; be it enacted, that the mayor of every such borough shall continue in office for one whole year, and until his successor shall have accepted the office of mayor, and shall have made and subscribed the declaration required in that behalf."

Mayor to hold over until acceptance of office by his successor.

5. "So much of the said act as provides for the appointment of any sheriff on the 1st day of November in this or any following year is hereby repealed; and that every such appointment of sheriff shall be on the 9th day of November, at the quarterly meeting of the council, and immediately after the election of mayor, and in all other respects according to the provisions of the said act; and every sheriff appointed under the provisions of the said act or of this act shall hold his office until the appointment of his successor."

Sheriff to be elected on 9th November instead of 1st November.

6. "In case of illness or unavoidable absence, the coroner for the time being of any borough, town, or city named in the said act shall be empowered, and he is hereby required, by writing under his hand and seal, to appoint a fit person, being a barrister at law or an attorney of one of his Majesty's courts at Westminster, and not being an alderman or councillor of such borough, town, or city, to act for him as deputy coroner during the illness or unavoidable absence of such coroner, but no longer or otherwise: provided always, that the mayor or two justices of such borough, town, or city shall on each occasion certify under their hands and seals the necessity for the appointment of such deputy coroner; and such certificate shall state the cause of absence of the coroner, and shall be openly read to every inquest jury summoned by such deputy coroner; and the particulars of every inquest holden before any deputy coroner shall be included in the return to be made by the coroner to the secretary of state, as provided by the said act."

Coroner may appoint a deputy in case of illness or unavoidable absence.

Provis

7. "In every case in which before the passing of the said act a court of requests or of conscience for the recovery of small debts was established in any borough, town, city, or county of a town or city, the boundary whereof shall have been enlarged by the said act, the jurisdiction of such court shall be extended to such enlarged boundary: provided nevertheless, that nothing herein contained shall extend to give such court cognisance of any suit which before the passing of this act could not be brought therein, and could be brought in some other court of conscience or requests."

Extension of jurisdiction of courts of requests.

8. "Every thing provided under any local act of Parliament to be done exclusively by any particular or limited number, class, or description of the members of any body corporate named in the schedules (A.)

Powers of local acts heretofore exercised by justices in quarter

6 & 7 Will. 4, c. 105.

sessions, and not within the powers of the recorder, vested in the council (a).

and (B.) annexed to the said act for regulating corporations, the continuance of which is not inconsistent with the provisions of the said act, and also every thing provided in any such local acts to be done by the justices, or by some particular class or description of members of such body corporate, being justices, at some court of general or quarter sessions assembled, and which does not relate to the business of a court of criminal or civil judicature, shall and may be done by the council at some quarterly meeting of the council, or by some committee of the council, or any three or more of such committee to be appointed at a quarterly meeting of the council: provided also, that every thing herein authorized to be done at a quarterly meeting of the council may be done at a meeting of the council to be specially summoned for that purpose as soon as may be after the passing of this act: provided also, that no recorder by virtue of his office shall have power to allow, apportion, make, or levy, or do any act whatsoever with relation to the allowance, apportionment, making, or levying of any rate whatsoever."

Provision for holding courts of record.

9. "And whereas doubts have arisen as to the provisions of the said act for regulating corporations respecting judges in borough courts of record for the trial of civil actions not regulated by the provisions of any local act of Parliament, or in which at the time of passing the said act a barrister of five years' standing did not act as judge or assessor; be it therefore enacted and declared, that from and after the passing of this act the recorder, and in the absence of the recorder such person, being a barrister of not less than five years' standing, as shall be appointed by the recorder under his hand and seal to hold the said court, shall be the judge of such court, and shall hold the said court at such times as the said recorder in his discretion may think fit, or as his Majesty shall think fit to direct; and every recorder or person so appointed to hold such court shall be entitled to have such salary paid to him out of the borough fund as the council shall fix by some bye-law to be made in that behalf: provided also, that all rules hereafter to be made for regulating the practice of such courts shall be approved and signed by the recorder of such borough, if there shall be a recorder, before the same shall be submitted to the judges of the superior courts for allowance and confirmation by them according to the provisions of said recited act."

Repeal of part of 5 & 6 Will. 4, c. 76, as to courts of quarter sessions for the Cinque Ports, and new provision made.

10. "So much of the said act as provides that the courts of quarter sessions of the peace of the towns and ports of Hastings, Sandwich, Dover, and Hythe, and of the ancient town of Rye, or of such of the said towns and ports and ancient town to which his Majesty shall grant a separate court of quarter sessions of the peace, shall have jurisdiction over offences and matters committed, arising, and happening within the towns named in the schedule to the said act which are ancient corporate

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(a) By a local act of Parliament, 56 Geo. 3, a court of requests was created at Bristol, and certain fees, according to a table therein contained, were fixed to be paid to the assessor and officers of the court, with power for the justices of the peace for the said city, at any general quarter sessions of the peace, to lessen or reduce them. By 6 & 7 Will. IV. c. 105, s. 8, it is enacted, "That every thing provided in any local act of Parliament to be done by the justices, or by some particular class or description of members of such body corporate, being justices, at some court of general or quarter sessions assembled, and which does not relate to the business of a court of criminal or civil judicature, shall and may be done by the council, at some quarterly meeting of the council." The town council of Bristol, acting under the Municipal Corporation Act, 5 & 6 Will. IV. c. 76, s. 124, and 6 & 7 Will. IV. c. 105, s. 8, by an order of council reduced the fees payable to the assessor and clerk of the court: — Held, that the regulation of the fees of the court of requests was a matter relating to the business of a court of civil jurisdiction, and that the town council had no authority to interfere with it. (*Palmer* v. *Powell*, 6 Mee. & W. 627. And see further as to the construction of this sect. n. (a) to sect. 72 of 5 & 6 Will. IV. c. 76).

members and liberties of the said towns and ports and ancient town respectively, and to which his Majesty shall not grant a separate court of quarter sessions of the peace, and also provides that any or either of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and ancient town of Rye, to which his Majesty shall not grant a separate court of quarter sessions of the peace, and their or its members and liberties shall, for all purposes relating to the jurisdiction of courts of quarter sessions of the peace, be respectively within the jurisdiction of the courts of quarter sessions of the peace of the nearest other of the said towns and ports or ancient town to which his Majesty shall grant a separate court of quarter sessions of the peace, is hereby repealed; and it is hereby enacted, that until other provision shall be made by Parliament in that behalf, courts of general sessions of the peace and gaol delivery shall and may be holden in and for the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and ancient town of Rye, or such of the said towns and ports and ancient town to which his Majesty shall not grant a separate court of quarter sessions of the peace, and for the ancient members and liberties thereof, not being corporate, and also in and for the towns of Deal, Faversham, Folkestone, and Tenterden, or such of the said towns to which his Majesty shall not grant a separate court of quarter sessions of the peace, before the person who at the time of the passing of the said act was or acted as recorder or steward or assessor, or by whatsoever other name he was called, of the said towns and ports, ancient town and towns respectively; or in case of his death or resignation or absence, or in case there was no such recorder or steward or assessor, then before any barrister at law of not less than five years' standing, whom his Majesty shall appoint to hold the same, in the same manner in other respects, and with the same powers and authorities as before the passing of the said act, except as regards the trial of capital felonies; and so long as such courts of general sessions of the peace and gaol delivery shall be holden, the offices of clerk of the peace and coroner shall be holden and exercised by the same persons, or by the same officers of such of the said towns and ports, ancient town and towns respectively, to which his Majesty shall not grant a separate court of quarter sessions, by whom or by which the same were holden at the time of the passing of the said act; or in case of their death or resignation, or there being no longer such officers, then by such persons as the councils of such towns and ports, ancient town and towns respectively, shall appoint to hold the same, with the same powers and authorities as before the passing of the said act; and the non-corporate members and liberties of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and the said ancient town of Rye, shall and may be chargeable and charged by the courts of general or quarter sessions of the peace holden for the same respectively, with a due proportion of the expenses of such towns and ports and ancient town respectively, and the non-corporate members and liberties thereof, to the payment of which expenses rates in the nature of county rates are applicable, and the same shall and may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the said act; and a due proportion of inhabitant householders to serve as grand jurors and jurors at the courts of general or quarter sessions of the peace of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and of the said ancient town of Rye, shall be summoned by the clerks of the peace of the said towns and ports and ancient town from the non-corporate members and liberties thereof respectively, and the attendance of such jurors shall be enforced and their defaults punished in the manner by the said act directed with respect to jurors in boroughs." (See 5 & 6 Will. IV. c. 76, ss. 135, 136, *ante*, 120.)

6 & 7 Will. 4, c. 105.

11. "His Majesty's justices of the peace acting under the authority of a commission or commissions issued by virtue of an act passed in the fifty-first year of the reign of his late Majesty King George the Third,

Justices acting under commissions granted by virtue of 51 Geo. 3,

6 & 7 Will. 4, c. 105

c. 36, may exercise all the powers of justices in counties relating to the granting of licenses to victualers.

intituled 'An Act to facilitate the Execution of Justice within the Cinque Ports,' shall and may have and exercise all the jurisdiction, powers, and authorities belonging to justices of the peace in counties relating to the granting of licenses or authorities to persons to keep inns, alehouses, or victualling houses, or to sell excisable liquors by retail, within any of the said towns and ports of Hastings, Sandwich, Dover, and Hythe, and of the ancient town of Rye respectively, which shall not have justices of the peace assigned to them by virtue of the said act passed in the last session of Parliament, and the non-corporate members and liberties thereof, and also within any of the said towns of Deal, Faversham, Folkestone, and Tenterden respectively, which shall not have justices of the peace assigned to them by virtue of the same act." (See 5 & 6 W. IV. c. 76, s. 136, &c., *ante*, 120.)

His Majesty may appoint the vice-chancellor of Cambridge University to be a justice of the borough.

12. "And whereas doubts have been entertained whether, under the provisions of the said recited act, it may be lawful for his Majesty from time to time to constitute and appoint the vice-chancellor of the University of Cambridge for the time being a justice of the peace in and for the town and borough of Cambridge; be it therefore enacted, that it shall be lawful for his Majesty, his heirs and successors, from time to time, if his Majesty shall so think fit, in and by his commission of the peace for the said town and borough to constitute and appoint the vice-chancellor of the university for the time being a justice of the peace for the said town and borough, anything in the said recited act or in this act to the contrary notwithstanding: provided always, that no vice-chancellor of the said university, by reason of his being named in any commission of the peace for the said town and borough, shall thereby have, as touching the grant of licenses to alehouses, any greater authority as justice of the peace than any other justice of the peace named in any such commission, but that nothing in this act shall be construed to alter or in any way to affect the rights and privileges which the vice-chancellor by virtue of his office now lawfully has or enjoys, or might have lawfully had and enjoyed if the vice-chancellor had or been appointed under the provisions of this act a justice of the peace for the said town and borough."

Proviso as to vice-chancellor's power of licensing alehouses.

2 & 3 Vict. c. 27.

By stat. 2 & 3 Vict. c. 27, intituled "An Act for regulating the Proceedings in the Borough Courts of England and Wales," (19th July, 1839), reciting "Whereas great difficulty has been found in framing legal and convenient rules for regulating the practice of borough courts under the authority given for that purpose by an act passed in the session holden in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled 'An Act to provide for the regulation of Municipal Corporations in England and Wales,' and by an act passed in the session holden in the sixth and seventh years of the same reign, intituled 'An Act for the Letter Administration of Justice in certain Boroughs;' and it is expedient that the power to make rules for regulating the proceedings of such courts, subject to the approbation and confirmation of the judges of the superior courts of common law at Westminster, should be explained and in some respects enlarged: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That in every borough named in the schedules (A.) and (B.) to the first hereinbefore mentioned act annexed, in which by charter, custom, or otherwise, there is or ought to be holden a court of record for the trial of civil actions, every judge of such court shall have authority to make, alter, and revoke such rules for appointing the times of holding such court, for regulating the forms and manner of proceeding, the process, appearance, practice, and pleadings in such court, and for settling the reasonable fees of the attornies of the court for business transacted therein, as shall from time to time seem to him necessary and proper for expediting the business of such court with most convenience, and at the smallest reasonable expense: provided always, that no such rules,

5 & 6 Will. 4, c. 76.

6 & 7 Will. 4, c. 105.

Judges of courts of record in boroughs empowered to make, &c rules for regulating the said courts.

Such rules to be

or any order revoking or altering such rules, shall be of any force until they shall have been allowed and confirmed by three of the judges of the superior courts of common law at Westminster."

7 Will. 4 & 1 Vict. c. 19.

confirmed by three judges.

2. "That every such court shall be holden for the trial of issues of fact and of law four times at least in each year, and with no greater interval between the holding of any two successive courts than four calendar months."

Courts to be held four times yearly.

3. "That from and after the first day of September next all personal actions brought in the borough courts of England and Wales shall be commenced by writ of summons."

Personal actions to be by summons.

By stat. 7 Will. 4 & 1 Vict. c. 19, [30th June, 1837], intituled "An Act to empower the Recorder or other Person presiding in Quarter Sessions in Corporate Cities and Towns, and Justices of the Peace for Counties, Ridings, or Divisions, to divide their respective Courts in certain cases," reciting "Whereas in large corporate cities and towns the quarter sessions of the peace may sometimes last beyond three days, and where such is the case considerable inconvenience and increased expense will result from the detention of jurors and witnesses and the unavoidable attendance of a large portion of the municipal police: And whereas for the remedying thereof it is expedient that a similar power of forming a second court to that which is vested in the justices at the general quarter sessions for counties, by virtue of an act passed in the fifty-ninth year of his late Majesty King George the Third, intituled 'An Act to empower Magistrates to divide the Court of Quarter Sessions,' should be given to the recorder or other person presiding in the court of quarter sessions of corporate cities or towns: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That whenever it shall appear to such recorder or other person presiding as aforesaid that the said quarter sessions are likely to last more than three days, including the day of assembling, it shall and may be lawful for such recorder or other person so presiding, at his discretion, but subject to the provisions hereinafter contained, to order a second court to be formed, and to appoint by writing under his hand and seal a barrister at law, of not less than five years' standing, to preside and try such felonies and misdemeanors as shall be referred to him therein, whilst the said recorder or other person is sitting in such quarter sessions; and for the effectual execution of the powers of this act, such recorder or other person so presiding shall be empowered in such case to call upon the clerk of the peace, and such clerk of the peace is in such case hereby authorized and required to appoint an assistant, and such recorder or other person shall himself appoint an additional crier for such second court; and such barrister shall be styled 'assistant barrister,' and shall exercise, for the time being, whilst the said recorder or other person is so sitting as aforesaid, the same powers as are exercised by the said recorder or other person presiding as aforesaid, and subject to the same rules and regulations; and the proceedings so had by and before such assistant barrister shall be as good and effectual in the case to all intents and purposes as if the same were had before the said recorder or other person so presiding as aforesaid, and shall be enrolled and recorded accordingly: provided always, that if at any time during the sitting of such second court the recorder or other person shall be of opinion that it is no longer required, he may direct the assistant barrister, at a proper opportunity, to adjourn the same: provided also, that no such recorder or other person so presiding as aforesaid shall at any time exercise the powers and discretion given by this act, unless it shall have been theretofore and before each such quarter sessions certified to him under the hand or hands of the mayor or of two of the aldermen of such corporate city or town, that the council of such

7 Will. 4 & 1 Vict. c. 19.

59 Geo. 3, c. 28.

Power to the recorder or other person presiding to form a second court, and appoint a barrister to preside therein.

Clerk of the peace in such cases may appoint an assistant.

Court may be adjourned.

Proceedings preliminary to the exercise of the powers hereby given.

7 Will. 4 & 1 Vict. c. 19

corporate city or town have resolved that it will be expedient and for the benefit of the inhabitants thereof that the same should be exercised, nor unless the name of the barrister proposed to be appointed, in case such recorder or other person shall in the exercise of such discretion deem such appointment necessary, shall have at some previous time been transmitted to and approved of by one of his Majesty's principal secretaries of state as a fit and proper person to be from time to time so appointed."

Remuneration to officers of said second court.

2. "That such assistant barrister shall be entitled to a remuneration of ten guineas per diem for each day that he shall so preside as aforesaid; and such assistant clerk of the peace shall be entitled to a remuneration of two guineas per diem; and such additional crier shall be entitled to a remuneration of half-a-guinea per diem, for such time as they shall execute their respective offices in such second court, and such remuneration shall be paid by the treasurer of the borough out of the borough fund; and the recorder or other person presiding shall grant a certificate to such assistant barrister, such assistant clerk of the peace, and such additional crier respectively, stating the number of days that each shall have executed his several office, and the amount that he is entitled to claim; and such certificate shall be a sufficient authority to the treasurer of the borough to pay the same, and shall be retained by him as a voucher for such payment: provided always, that such assistant barrister, assistant clerk of the peace, or additional crier, shall not in any case be entitled to claim remuneration for more than two days."

Appointments not subject to duty.

3. "That the appointments and certificates authorized and directed by this act shall not be subject to any stamp duty or other tax whatsoever."

SCHEDULES TO WHICH THE 5 & 6 WILL. 4, c. 76, REFERS.

SCHEDULE (A). ENGLAND AND WALES.

BOROUGHS WHICH ARE TO HAVE A COMMISSION OF THE PEACE.

Sect. 1.—*Parliamentary Boundaries to be taken until altered by Parliament.*

Borough.	*Wards.*	*Aldermen.*	*Councillors.*	*Style of Corporate Body.*
Aberystwith. ..	0	4	12	Mayor and burgesses of the town, borough, and liberty of Aberystwith.
Abingdon.....	0	4	12	Mayor, bailiffs, and burgesses of the borough of Abingdon.
Barnstaple	2	6	18	Mayor, aldermen, and burgesses of the borough and parish of Barnstaple, in the county of Devon.
Bath.....	7	14	42	Mayor, aldermen, and citizens of the city of Bath.
Bedford	2	6	18	Mayor, bailiffs, and burgesses of the town of Bedford.

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Berwick-upon-Tweed (a)	3	6	18	Mayor, bailiffs, and burgesses of the borough of Berwick-upon Tweed.
Bridgewater....	2	6	18	Mayor, aldermen, and burgesses of the borough of Bridgewater.
Bridport	2	6	18	Bailiffs and burgesses of the borough of Bridport.
Bristol	10	16	48	Mayor, burgesses, and commonalty of the city of Bristol.
Bury St. Edmunds	3	6	18	Aldermen and burgesses of Bury St. Edmunds, in the county of Suffolk.
Cambridge	5	10	30	Mayor, bailiffs, and burgesses of the borough of Cambridge.
Canterbury	3	6	18	Mayor and commonalty of the city of Canterbury.
Cardiff.....	2	6	18	Bailiffs, aldermen, and burgesses of the town of Cardiff.
Carlisle	5	10	30	Mayor, aldermen, bailiffs, and citizens of the city of Carlisle.
Carmarthen....	3	6	18	Mayor, burgesses, and commonalty of the borough of Carmarthen.
Carnarvon	2	6	18	Mayor, bailiffs, and burgesses of the town and borough of Carnarvon.
Chester	5	10	30	Mayor and citizens of the city of Chester.
Chichester	2	6	18	Mayor, aldermen, and citizens of the city of Chichester.
Colchester	3	6	18	Mayor and commonalty of the borough of Colchester.
Dartmouth	0	1	12	Mayor, bailiffs, and burgesses of the borough of Clifton Dartmouth Hardness, in the county of Devon.
Denbigh	0	4	12	Aldermen, bailiffs, and burgesses of the borough of Denbigh.
Derby	6	12	36	Mayor, aldermen, and burgesses of the borough of Derby.
Devizes	2	6	18	Mayor and burgesses of the borough of Devizes.
Dorchester ...	0	4	12	Mayor, bailiffs, aldermen and burgesses of the borough of Dorchester, in the county of Dorset.
Dovor	3	6	18	Mayor, jurats, and commonalty of the town and port of Dovor.
Durham	3	6	18	Mayor, aldermen, and commonalty of the city of Durham and Framwelgate.
Evesham	0	4	12	Mayor, aldermen, and burgesses of the borough of Evesham.
Gateshead	3	6	18	Boroughholders and freemen of the borough of Gateshead.
Gloucester	3	6	18	Mayor and burgesses of the city of Gloucester, in the county of the city of Gloucester.
Guildford	0	4	12	Mayor and burgesses of the town of Guldeford, in the county of Surrey.
Harwich	0	4	12	Mayor and burgesses of the borough of Harwich.

(a) See 6 & 7 Will. 4, c. 103, s. 6, *ante*, 138.

5 & 6 Will. 4, c. 76.

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Haverfordwest..	0	4	12	Mayor, sheriffs, bailiffs, and burgesses of the county of the town of Haverfordwest, or of the town and county of the town of Haverfordwest.
Hereford	3	6	18	Mayor, aldermen, and citizens of the city of Hereford.
Hertford	0	4	12	Mayor, aldermen, and commonalty of the borough of Hertford.
Ipswich	5	10	30	Bailiffs, burgesses, and commonalty of the town or borough of Ipswich.
Kendal.....	3	6	18	Mayor, aldermen, and burgesses of the borough of Kirby-in-Kendal, in the county of Westmoreland.
Kidderminster..	3	6	18	High bailiff and commonalty of the borough of Kidderminster, in the county of Worcester.
Kingston-upon-Hull	7	14	42	Mayor and burgesses of the town or borough of Kingston-upon-Hull.
King's Lynn ..	3	6	18	Mayor and burgesses of the borough of Lynn Regis.
Leeds	12	16	48	Mayor, aldermen, and burgesses of the borough of Leeds, in the county of York.
Leicester	7	14	42	Mayor, bailiff, and burgesses of the borough of Leicester.
Leominster ...	0	4	12	Bailiffs and burgesses of the borough of Leominster.
Lichfield	2	6	18	Bailiff and citizens of the city of Lichfield.
Liverpool.....	16	16	48	Mayor, bailiffs, and burgesses of the borough of Liverpool.
Macclesfield ..	6	12	36	Mayor, aldermen, and burgesses of the borough of Macclesfield.
Monmouth	0	4	12	Mayor, bailiffs, and commonalty of the town and borough of Monmouth.
Neath	0	4	12	Portreeve, aldermen, and burgesses of the borough of Neath.
Newark	3	6	18	Mayor and aldermen of the borough of Newark, in the county of Nottingham.
Newcastle-under-Lyne	2	6	18	Mayor, bailiffs, and burgesses of Newcastle-under-Lyne, in the county of Stafford.
Newcastle-upon-Tyne	7	14	42	Mayor and burgesses of the town of Newcastle-upon-Tyne, in the county of the town of Newcastle-upon-Tyne.
Newport, Monmouth	2	6	18	Mayor, aldermen, and burgesses of the borough of Newport.
Newport, Isle of Wight	2	6	18	Mayor, aldermen, and chief burgesses of the borough of Newport, in the Isle of Wight, in the county of Southampton.
Northampton ..	3	6	18	Mayor, bailiffs, and burgesses of Northampton.
Norwich	8	16	48	Mayor, sheriffs, citizens, and commonalty of the city of Norwich.
Nottingham....	7	14	42	Mayor and burgesses of the town of Nottingham.
Oxford.....	5	10	30	Mayor, bailiffs, and commonalty of the city of Oxford, in the county of Oxford.
Pembroke	2	6	18	Mayor, bailiffs, and burgesses of the town and borough of Pembroke.

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Poole	2	6	18	Mayor, bailiffs, burgesses, and commonalty of the town of Poole.
Portsmouth	7	14	42	Mayor, aldermen, and burgesses of the borough of Portsmouth, in the county of Southampton.
Preston	6	12	36	Mayor, bailiffs, and burgesses of the borough of Preston, in the county palatine of Lancaster.
Reading	3	6	18	Mayor, aldermen, and burgesses of the borough of Reading, in the county of Berks.
Ripon	0	4	12	Mayor, burgesses, and commonalty of the borough of Ripon, in the county of York.
Rochester	3	6	18	Mayor and citizens of the city of Rochester, in the county of Kent.
St. Alban's	0	4	12	Mayor and aldermen and burgesses of the borough of Saint Alban's, in the county of Hertford.
Sarum, New ..	3	6	18	Mayor and commonalty of the city of New Sarum, in the county of Wilts.
Scarborough .	2	6	18	Bailiffs and burgesses of the town of Scarborough.
Shrewsbury	5	10	30	Mayor, aldermen, and burgesses of the town of Shrewsbury, in the county of Salop.
Southampton ..	5	10	30	Mayor, bailiffs, and burgesses of the town of Southampton
Stafford	2	6	18	Mayor, aldermen, and burgesses of the borough of Stafford.
Stamford	2	6	18	Mayor, aldermen, and capital burgesses of the town or borough of Stamford, in the county of Lincoln.
Stockport	7	14	42	Mayor, aldermen, and burgesses of the borough of Stockport.
Sudbury	0	4	12	Mayor, aldermen, and burgesses of the borough of Sudbury.
Sunderland (a)	7	14	42	Mayor, aldermen, and commonalty of the borough of Sunderland.
Swansea	3	6	18	Portreeve, aldermen, and burgesses of the borough of Swansea.
Tiverton	3	6	18	Mayor and burgesses of the town and parish of Tiverton, in the county of Devon.
Truro	2	6	18	Mayor, aldermen, and capital burgesses of the borough of Truro.
Warwick	2	6	18	Mayor, aldermen, and burgesses of the borough of Warwick.
Wells	0	4	12	Mayor, masters, and burgesses of the city or borough of Wells, in the county of Somerset.
Weymouth and Melcombe Regis	2	6	18	Mayor, aldermen, bailiffs, burgesses, and commonalty of the borough and town of Weymouth and Melcombe Regis, in the county of Dorset
Wigan	5	10	30	Mayor, aldermen, and burgesses of the borough of Wigan.

(a) See 6 & 7 Will. 4, c. 103, s. 2, *ante*, 137.

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Winchester	3	6	18	Mayor, bailiffs, and commonalty of the city of Winchester.
Windsor	2	6	18	Mayor, bailiffs, and burgesses of the borough of New Windsor, in the county of Berks.
Worcester	6	12	36	Mayor, aldermen, and citizens of the city of Worcester.
Yarmouth, Great	6	12	36	Mayor, aldermen, burgesses, and commonalty of the borough of Great Yarmouth, in the county of Norfolk.

SECTION 2.—MUNICIPAL BOUNDARIES to be taken until altered by Parliament.

Andevor	0	4	12	Bailiff, approved men, and burgesses of the borough of Andevor.
Banbury	0	4	12	Mayor, aldermen, and burgesses of the borough of Banbury, in the county of Oxford.
Beverley	2	6	18	Mayor, aldermen, and burgesses of the borough of Beverley, in the county of York.
Bewdley	0	4	12	Bailiffs, burgesses, and inhabitants of the town and borough of Bewdley.
Bideford	0	4	12	Mayor, aldermen, and capital burgesses of the borough town and manor of Bideford, in the county of Devon.
Boston	3	6	18	Mayor, aldermen, and burgesses of the borough of Boston.
Brecon	0	4	12	Bailiff, aldermen, and burgesses of the borough of Brecon.
Bridgenorth....	0	4	12	Bailiffs, aldermen, and burgesses of the borough of Bridgenorth.
Clitheroe	0	4	12	Bailiffs and burgesses of the borough of Clitheroe, in the county of Lancaster.
Chesterfield....	0	4	12	Mayor, aldermen, and burgesses of the borough of Chesterfield.
Congleton	3	6	18	Mayor, aldermen, and burgesses of the borough of Congleton, in the county of Chester
Coventry	6	12	36	Mayor, bailiffs, and commonalty of the city of Coventry.
Deal	2	6	18	Mayor, jurats, and commonalty of the town of Deal, in the county of Kent.
Doncaster	3	6	18	Mayor, aldermen, and burgesses of the borough of Doncaster, in the county of York.
Exeter	6	12	36	Mayor, bailiffs, and commonalty of the city of Exeter.
Falmouth	0	4	12	Mayor, aldermen, and burgesses of the town of Falmouth, in the county of Cornwall.
Grantham	0	4	12	Aldermen and burgesses of the town or borough of Grantham.
Gravesend	2	6	18	Mayor, jurats, and inhabitants of the villages and parishes of Gravesend and Melton, in the county of Kent.
Grimsby	0	4	12	Mayor and burgesses of the town of Grimsby, in the county of Lincoln.
Hastings	3	6	18	Mayor, jurats, and commonalty of the town and port of Hastings, in the county of Sussex.

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Kingston-upon-Thames.	3	6	18	Bailiffs and freemen of the borough of Kingston-upon-Thames.
Lancaster	3	6	18	Mayor, bailiffs, and commonalty of the town of Lancaster, in the county Palatine of Lancaster.
Lincoln	3	6	18	Mayor, sheriffs, citizens, and commonalty of the city of Lincoln.
Liskeard	0	4	12	Mayor and burgesses of the borough of Liskerret, otherwise Liskeard, in the county of Cornwall.
Louth	2	6	18	Warden and six assistants of the town of Louth, and free school of King Edward the Sixth in Louth.
Ludlow	0	4	12	Bailiffs, burgesses, and commonalty of the town and borough of Ludlow.
Maidstone	3	6	18	Mayor, jurats, and commonalty of the King's town and parish of Maidstone, in the county of Kent.
Maldon	0	4	12	Mayor, aldermen, and capital burgesses and commonalty of Maldon.
Newbury	0	4	12	Mayor, aldermen, and burgesses of the borough of Newbury.
Oswestry	2	6	18	Mayor, aldermen, common councilmen, and burgesses of Oswestry.
Penzance	2	6	18	Mayor, aldermen, and commonalty of the town of Penzance, in the county of Cornwall.
Plymouth	6	12	36	Mayor and commonalty of the borough of Plymouth.
Pontefract	0	4	12	Mayor, aldermen, and burgesses of the borough or town of Pontefract.
Richmond	0	4	12	Mayor and aldermen of the borough of Richmond, in the county of York.
Romsey	0	4	12	Mayor, aldermen, and burgesses of the town of Romsey Infra, in the county of Southampton.
St. Ives	0	4	12	Mayor and burgesses of the borough of St. Ives.
Saffron Walden	0	4	12	Mayor and aldermen of the town of Saffron Walden, in the county of Essex.
Stockton	2	6	18	Mayor, aldermen, burgesses, and commonalty of the borough of Stockton.
Tewkesbury....	0	4	12	Bailiffs, burgesses, and commonalty of the borough of Tewkesbury, in the county of Gloucester.
Walsall	3	6	18	Mayor and commonalty of the borough and foreign of Walsall, in the county of Stafford.
Welchpool	0	4	12	Bailiffs and burgesses of the borough of Poole, in the county of Montgomery.
Wenlock	3	6	18	Burgesses of the borough of Wenlock.
Wisbech	2	6	18	Burgesses of the borough of Wisbech.
York	6	12	36	Mayor and commonalty of the city of York.

SCHEDULE (B.)—ENGLAND AND WALES.

BOROUGHS WHICH ARE NOT TO HAVE A COMMISSION OF THE PEACE, UNLESS ON PETITION AND GRANT.

SECTION 1.—*Parliamentary Boundaries to be taken until altered by Parliament.*

Borough.	*Wards.*	*Aldermen.*	*Councillors.*	*Style of Corporate Body.*
Arundel	0	4	12	Mayor and burgesses of the borough of Arundel.
Beaumaris	0	4	12	Mayor, bailiff, and burgesses of the borough of Beaumaris.
Cardigan	0	4	12	Mayor, common council, and burgesses of the town and borough of Cardigan.
Llanidloes	0	4	12	Mayor and burgesses of the borough of Llanidloes.
Pwllheli	0	4	12	Mayor, bailiffs, and burgesses of the borough of Pwllheli.
Ruthin	0	4	12	Aldermen and burgesses of the borough of Ruthin
Tenby	0	4	12	Mayor, bailiffs, and burgesses of the borough of Tenby.
Thetford	0	4	12	Mayor and Burgesses of the borough of Thetford.
Totnes	0	4	12	Mayor and burgesses of the borough of Totnes, in the county of Devon.

SECT. 2.—*Municipal Boundaries to be taken until altered by Parliament.*

Basingstoke....	0	4	12	Mayor, aldermen, and burgesses of the town of Basingstoke, in the county of Southampton.
Beccles	0	4	12	Portreeve, surveyors, and commonalty of the fen of Beccles, in the county of Suffolk.
Blandford Forum	0	4	12	Bailiff and burgesses of the borough of Blandford Forum, in the county of Dorset.
Bodmin	0	4	12	Mayor and burgesses of the borough of Bodmin, in the county of Cornwall.
Buckingham ..	0	4	12	Bailiff and burgesses of the borough and parish of Buckingham, in the county of Buckingham.
Calne	0	4	12	Guild stewards and burgesses in the borough of Calne.
Chard	0	4	12	Portreeve and burgesses of the borough of Chard, in the county of Somerset.
Chippenham ..	0	4	12	Bailiffs and burgesses of the borough of Chippenham, in the county of Wilts.
Chipping Norton	0	4	12	Bailiffs and burgesses of the borough of Chipping Norton, in the county of Oxford.

Borough.	Wards.	Aldermen.	Councillors.	Style of Corporate Body.
Daventry	0	4	12	Bailiffs, burgesses, and commonalty of the borough of Daventry, in the county of Northampton.
Droitwich	0	4	12	Bailiffs and burgesses of the borough of Wych, otherwise Droitwich, in the county of Worcester.
Eye	0	4	12	Bailiff, burgesses, and commonalty of the town and burgh of Eye.
Faversham	0	4	12	Mayor, jurats, and commonalty of the town of Faversham.
Folkestone	0	4	12	Mayor, jurats, and commonalty of the town of Folkestone.
Flint.....	0	4	12	Mayor, bailiffs, and burgesses of the borough of Flint.
Glastonbury ..	0	4	12	Mayor and burgesses of the town of Glastonbury, in the county of Somerset.
Godalming	0	4	12	Warden and inhabitants of the town of Godalming.
Godmanchester .	0	4	12	Bailiffs, assistants, and commonalty of the borough of Cirencester, alias Godmanchester.
Helstone	0	4	12	Mayor and commonalty of the borough of Helston.
Huntingdon....	0	4	12	Mayor, aldermen, and burgesses of the borough of Huntingdon.
Hythe	0	4	12	Mayor, jurats, and commonalty of the town and port of Hythe, in the county of Kent.
Launceston	0	4	12	Mayor and commonalty of the borough of Dunneheved, otherwise Launceston.
Llandovery	0	4	12	Bailiff and burgesses of the borough of Llanymtheverye.
Lyme Regis....	0	4	12	Mayor and burgesses of the borough of Lyme, in the county of Dorset.
Lymington	0	4	12	Mayor and burgesses of the borough of Lymington.
Maidenhead....	0	4	12	Mayor, bridgemasters, and burgesses of the town of Maydenheth.
Marlborough ..	0	4	12	Mayor and burgesses of the borough and town of Marlborough, in the county of Wilts.
Morpeth	0	4	12	Bailiffs and burgesses of the borough of Morpeth, in the county of Northumberland.
Penryn.....	0	4	12	Mayor and burgesses of Penryn, in the county of Cornwall.
Retford, East ..	0	4	12	Bailiffs and burgesses of East Retford, in the county of Nottingham.
Rye	0	4	12	Mayor, jurats, and commonalty of the ancient town of Rye.
Sandwich.....	0	4	12	Mayor, jurats and commonalty of the town and port of Sandwich, in the county of Kent.
Shaftesbury....	0	4	12	Mayor and burgesses of the borough of Shafton, otherwise Shaftesbury, in the county of Dorset.
South Wold....	0	4	12	Bailiffs, aldermen, and burgesses of the borough of South Wold.
South Molton ..	0	4	12	Mayor and burgesses of the borough and parish of South Molton in the county of Devon.

Borough.	*Wards.*	*Aldermen.*	*Councillors.*	*Style of Corporate Body.*
Stratford-on-Avon	0	4	12	Mayor, aldermen, and burgesses of the borough of Stratford-upon-Avon.
Tamworth	0	4	12	Bailiffs and commonalty of the borough of Tamworth.
Tenterden	0	4	12	Mayor, jurats, and commons of the town and hundred of Tenterden, in the county of Kent.
Torrington	0	4	12	Mayor, aldermen, and burgesses of the borough and Town of Great Torrington, in the county of Devon.
Wallingford....	0	4	12	Mayor, burgesses, and commonalty of the borough of Wallingford.
Wycombe, Chipping	0	4	12	Mayor, bailiffs, and burgesses of the borough of Chipping Wycombe, (otherwise Wicombe), in the county of Buckingham.

SCHEDULE (C.)

Berwick-upon-Tweed.	Northumberland.
Bristol.	Gloucestershire.
Chester.	Cheshire.
Exeter.	Devonshire.
Kingston-upon-Hull.	Yorkshire.
Newcastle-upon-Tyne.	Northumberland.

SCHEDULE (D.)

No. 1.

THE LIST OF BURGESSES of the Borough of , in the Parish [or Township] of .

Christian Name and Surname of each Person at full Length.	Nature of the property rated.	Street, lane, or other place in this parish [or township] where the Property is situated for which he is now rated.
Ashton, John	Shop . .	No. 23, Church Street.
Bates, Thomas	House . .	. . . Brook's Farm.

(Signed) A. B. } *Overseers of the said Parish*
C. D. } [or "*Township.*"]

No. 2.

NOTICE OF CLAIM.

To the Town-Clerk of the Borough of .

I hereby give you notice, that I claim to have my name inserted in the Burgess List of the Borough of ; that I occupy [here describe the house, warehouse, counting-house, or shop then occupied by the claimant] *in the Borough, and that I have been rated in the Parish of* [here state the Parish or several Parishes, and the time during which the claimant has been rated in each of them within the Borough, necessary for his qualification.]

Dated the day of , in the year .
(Signed) John Allen, of [Place of Abode.]

No. 3.

NOTICE OF OBJECTION

To the Town Clerk of the Borough of , [or to the person objected to, as the case may be.]

I hereby give you notice, that I object to the name of Thomas Bates, of Brook's Farm, in the Parish of , [describe the person objected to as described in the Burgess List,] being retained on the Burgess List of the Borough of

Dated the *day of* , *in the year*
(Signed) *John Ashton, of* [here state the Place of Abode and Property for which he is said to be rated in the Burgess List.]

No. 4.

LIST OF CLAIMANTS

The following Persons claim to have their Names inserted on the Burgess List of the Borough of

Christian name and surname of each claimant.	Nature of the property for which he is now rated.	Situation of the property for which he is now rated.	Parish or [parishes] in which he has been rated, as stated in the claim.
Allen, John . .	House . .	No. 17, High-street	Rated in the last year in Saint Mary's parish, in the Borough, and in the two preceding years in Saint James's parish in the Borough.

(Signed) A. B. *Town Clerk.*

No. 5.

LIST OF PERSONS OBJECTED TO.

The following Persons have been objected to as not being entitled to have their Names retained on the Burgess List of the Borough of

Christian name and surname of each person objected to.	Nature of the property for which he is now rated.	Situation of the property for which he is said to be now rated in the Overseer's list.	Parish in which is the property for which he is now said to be rated in the Overseer's list.
Bates, Thomas .	House . .	Brook's Farm . .	Saint James'.

(Signed) A. B. *Town Clerk.*

SCHEDULE (E.)

ABINGDON.—An Act for better paving, lighting, watching and otherwise improving the town of Abingdon in the county of Berks, for removing nuisances, annoyances, and encroachments therein, and for preventing the same in future. [6 Geo 4, c. 189.]

ARUNDEL.—An Act for the better paving, cleansing, and lighting the streets, lanes, ways, and passages within the borough of Arundel in the county of Sussex, and for removing and preventing encroachments, obstructions, and annoyances therein. [25 Geo. 3, c. 90.]

BANBURY.—An Act for paving, cleansing, lighting, watching, and otherwise improving the several streets, lanes, public passages and places in the borough of Banbury in the county of Oxford. [5 Geo. 4, c. 130.]

BARNSTAPLE.—An Act for paving, improving, and regulating the streets and public places in the borough and parish of Barnstaple, and for better regulation of the present markets, and providing others therein. [51 Geo. 3, c. 154]

BASINGSTOKE.—An Act for paving the footways and crosspaths, and lighting, watching, cleansing, widening, and otherwise improving the streets, lanes, and other public passages and places in the town of Basingstoke in the county of Southampton. [55 Geo. 3, c. 7.]

BATH.—An Act for paving, cleansing, lighting, watching, and regulating the streets, squares, lanes, ways, passages, and public places within such part of the parish of Walcot in the county of Somerset as is not within the circuit, precinct, and jurisdiction of the city of Bath in the same county; and for removing and preventing nuisances, annoyances, encroachments, and obstructions, and for establishing a proper and effective police therein; and for licensing and regulating hackney coaches, chairs, porters, basket men, and basket women within the said city of Bath, and a certain distance thereof. [33 Geo. 3, c. 89.]

An Act for paving, steaning, cleansing, watering, lighting, watching, and regulating the streets, squares, lanes, ways, passages, and public places within the parish of Bathwick in the county of Somerset, and for removing and preventing nuisances, annoyances, encroachments, and obstructions, and for establishing a proper and effective police therein. [41 Geo 3. c. 126.]

An Act for better paving, cleansing, lighting, watching, regulating, and improving the city of Bath, and the liberties and precincts thereof. [54 Geo. 3, c. 105.]

An Act to amend an Act of his late Majesty, for paving, cleansing, lighting, watching, and regulating the streets and public places within such part of the parish of Walcot in the county of Somerset, as is not within the city of Bath. [6 Geo. 4, c. 74.]

BECCLES.—An Act for paving, lighting, cleansing, and otherwise improving the streets and other public passages and places within the town of Beccles in the county of Suffolk. [36 Geo. 3, c. 51.]

BEDFORD.—An Act for the improvement of the town of Bedford in the county of Bedford, and for rebuilding the bridge over the river Ouze in the said town. [43 Geo. 3, c. 128.]

An Act for amending and enlarging the powers of an Act of his present Majesty, intituled 'An Act for the improvement of the town of Bedford in the county of Bedford, and for rebuilding the bridge over the river Ouze in the said town.' [50 Geo. 3, c 82.]

BERWICK-UPON-TWEED.—An Act for lighting the streets and lanes of the borough of Berwick-upon-Tweed, and the quays and wharfs belonging to the said borough and that part of the bridge over the river Tweed which lies within the liberties of the said borough, and also the street of Castlegate within the said borough or the liberties thereof; and for paving the footpaths of the streets of the said borough and of Castlegate aforesaid; and for preventing obstructions, nuisances, and annoyances therein. [40 Geo. 3, c. 25.]

BEVERLEY.—An Act for lighting, watching, and regulating the streets and lanes and other public passages and places in the town of Beverley in the county of York. [48 Geo. 3, c. 87.]

An Act to amend and enlarge the powers of an Act passed in the forty-

eighth year of the reign of his late Majesty King George the Third, for lighting, watching, and regulating the streets, lanes, and other public passages and places within the town of Beverley in the county of York. [6 Geo. 4, c. 138.] 5 & 6 Will. 4, c. 76.

BOSTON.—An Act for lighting and watching the streets, lanes, and other public passages and places within the borough of Boston, in the county of Lincoln, and for removing and preventing nuisances, annoyances, and obstructions therein. [16 Geo 3, c. 25.]

An Act for the better paving, cleansing, and otherwise improving the borough of Boston, in the county of Lincoln. [32 Geo. 3, c. 80.]

An Act for amending and rendering more effectual an Act passed in the thirty-second year of his present Majesty, for better paving, cleansing, and otherwise improving the borough of Boston in the county of Lincoln. [46 Geo. 3, c. 40.]

An Act for amending and rendering more effectual an Act passed in the sixteenth year of his present Majesty, for lighting and watching the streets, lanes, and other public passages and places within the borough of Boston in the county of Lincoln, and for removing and preventing nuisances therein. [46 Geo. 3, c. 41.]

BRECKNOCK.—An Act for supplying the borough and town of Brecknock, and liberties thereof, with water; and for paving, cleansing, regulating and lighting the streets, lanes, and public passages there; and for widening and making commodious some of the said streets, lanes, and passages. [16 Geo. 3, c. 56.]

BRIDGEWATER.—An Act to enlarge the market-house, and regulating the markets within the borough of Bridgewater in the county of Somerset; for paving, cleansing, lighting, and watching the streets, lanes, and other public passages and places within the said borough or adjacent thereto; and for the improvement thereof. [7 Geo. 4, c. 7.]

BRIDPORT.—An Act for taking down the market-house in the borough of Bridport in the county of Dorset, and rebuilding the same, together with a session or court-house, in a more convenient situation; for removing the shambles or butchers' row; for paving, cleansing, lighting, and watching the said borough; for removing and preventing nuisances and annoyances; and for prohibiting the covering of any new houses or buildings within the borough with thatch. [25 Geo. 3.]

BRISTOL.—An Act for the better preserving the navigation of the rivers Avon and Frome, and for cleansing, paving, and lighting the streets of the city of Bristol. [11 Will. 3, c. 23.]

An Act for making more effectual an Act passed in the eleventh and twelfth years of the reign of King William the Third, for the better preserving the navigation of the rivers Avon and Frome, and for cleansing, paving, and enlightening the streets of the city of Bristol, so far as the same Act relates to the paving and enlightening the said streets: and for the regulating hackney coachmen, halliers, draymen, and carters, and the markets and sellers of hay and straw, within the said city and liberties thereof. [22 Geo. 2.]

An Act for establishing, maintaining, and well-governing a nightly watch within the city of Bristol. [28 Geo. 2, c. 32.]

An Act to explain and render more effectual an Act made in the last session of parliament, intituled 'An Act for establishing, maintaining, and well-governing a nightly watch within the city of Bristol.' [29 Geo. 2, c. 47.]

An Act for widening several streets, lanes, ways, and passages within the city of Bristol, and for opening several new streets and passages within the same; and for explaining, amending, and enlarging the powers of the several Acts passed for paving, cleansing, lighting, watching, and regulating the streets and other places within the said city and liberties thereof. [6 Geo. 3, c. 34.]

An Act for removing and preventing encroachments, obstructions, annoyances, and other nuisances within the city of Bristol and the liberties thereof; and for licensing and better regulating hackney coaches, chairs, waggons, carts, and other carriages, and the owners, drivers, and carriers thereof respectively, and porters and other persons, within and for certain distances round the said city and liberties; and for better regulating the shipping and trade, and the rivers, wharfs, backs, and quays, and the markets, within the same city and liberties; and for other purposes. [23 Geo. 3, c. 65.]

5 & 6 Will. 4, c. 76.

An Act for amending, altering, and enlarging the powers of several Acts passed for paving, pitching, cleansing, and lighting the streets and other places within the city of Bristol and liberties thereof. [46 Geo. 3, c. 26.]

An Act for the employment, maintenance, and regulation of the poor of the city of Bristol, and for altering the mode of assessing the rates for the relief of the poor, and certain rates authorized to be raised and levied within the said city by certain Acts for improving the harbour there, and for paving, pitching, cleansing, and lighting the same city; and for the relief of the churchwardens and overseers from the collecting of such rates; and for amending the Act for paving, pitching, cleansing, and lighting the said city. [3 Geo. 4, c. 24.]

An Act for repairing, lighting, and watching the district of the united parishes of Saint James and Saint Paul in the county of Gloucester, and for the care of the poor thereof. [2 Geo. 4, c. 89.]

An Act for lighting and watching the parish of Clifton in the county of Gloucester. [5 Geo. 4, c. 79.]

Bury Saint Edmund's.—An Act for better paving, lighting, cleansing, watching, and otherwise improving the town of Bury Saint Edmund's in the county of Suffolk. [51 Geo. 3, c. 9.]

An Act to amend, extend, and render more effectual an Act of his late Majesty, for paving, lighting, cleansing, watching, and otherwise improving the town of Bury Saint Edmund's in the county of Suffolk. [1 Geo. 4.]

Cambridge.—An Act for better paving, cleansing, and lighting the town of Cambridge, for removing and preventing obstructions and annoyances, and for widening the streets, lanes, and other passages within the said town. [28 Geo. 3, c. 64.]

An Act to amend and enlarge the powers of an Act passed in the twenty-eighth year of the reign of his present Majesty, intituled "An Act for the better paving, cleansing, and lighting the town of Cambridge, for removing and preventing obstructions and annoyances, and for widening the streets, lanes, and other passages within the said town." [34 Geo. 3, c. 104.]

Canterbury.—An Act for paving, cleansing, lighting, and watching the streets, lanes, and other public passages and places within the walls of the city of Canterbury and the liberties thereof, and also several streets and other places near or adjoining to the said city; and for removing and preventing encroachments, obstructions, nuisances, and annoyances therein. [27 Geo. 3, c. 31.]

Cardiff.—An Act for better paving, cleansing, and lighting the streets, lanes, and public passages in the town of Cardiff, and liberties thereof, in the county of Glamorgan, and for removing and preventing nuisances and annoyances therein. [Geo. 3, c. 7.]

Carlisle.—An Act for lighting the streets, lanes, and other public passages and places within the city of Carlisle in the county of Cumberland, and the suburbs of the said city; for paving the footpaths of the streets of the said city and suburbs; and for otherwise improving the said city. [44 Geo. 3, c. 58.]

An Act for watching, regulating, and improving the city of Carlisle and the suburbs thereof. [7 & 8 Geo. 4, c. 86.]

Chester.—An Act for better regulating the poor, maintaining a nightly watch, lighting, paving, and cleansing the streets, rows, and passages, providing fire-engines and firemen, and regulating the hackney coachmen, chairmen, carmen, and porters, within the city of Chester. [2 Geo. 3.]

An Act to amend, alter, and enlarge the powers of an Act passed in the second year of the reign of his present Majesty, so far as the same relates to the maintaining a nightly watch, and lighting and cleansing the streets, rows, and passages, within the city of Chester, and for preventing nuisances and annoyances in the streets, rows, and passages within the said city, and for regulating and improving the police thereof. [43 Geo. 3, c. 47.]

Chichester.—An Act for repealing an Act made in the eighteenth year of the reign of Queen Elizabeth, intituled "An Act for paving of the city of Chichester;" and for the better paving, repairing, and cleansing the streets, lanes, and public ways and passages within the walls of the said city, and for removing and preventing encroachments, obstructions, and annoyances therein. [31 Geo. 3, c. 63.]

An Act for better lighting and for watching the city of Chichester and places adjacent. [1 & 2 Geo. 4, c. 68.] 5 & 6 Will. 4, c. 76.

CHEPPING WYCOMBE.—An Act for paving, widening, cleansing, watching, lighting, and regulating the streets and other public places within the borough of Chepping-Wycombe in the county of Bucks, and for removing and preventing nuisances and obstructions therein. [53 Geo. 3, c. 164.]

CHIPPENHAM —An Act for lighting, watching, cleansing, paving, and otherwise improving the town of Chippenham in the county of Wilts. [4 Will. 4, c. 47.]

COVENTRY.—An Act for the better paving, cleansing, lighting, and watching the city of Coventry and the suburbs thereof, and removing and preventing nuisances and annoyances therein; and for regulating the public wells and pumps within the said city and suburbs. [30 Geo. 3, c. 77.]

DARTMOUTH —An Act for building a market house in the borough of Clifton Dartmouth Hardness in the county of Devon, and for better paving, lighting, widening, and improving the streets and other public places within the said borough. [55 Geo. 3, c. 28.]

DAVENTRY.—An Act for paving, cleansing, lighting, and watching the town of Daventry in the county of Northampton, and for regulating the market there, and for enabling the bailiff, burgesses, and commonalty of the borough of Daventry to purchase the Moot-Hall, and to rebuild the same. [46 Geo. 3, c. 118.]

DEAL.—An Act for more effectually paving, cleansing, lighting, and watching the highways, streets, and lanes within the town and borough of Deal in the county of Kent, and for removing and preventing encroachments, nuisances, and annoyances therein. [52 Geo. 3, c. 73.]

DERBY.—An Act for paving, cleansing, lighting, and otherwise improving the streets, lanes, and other public passages and places within the borough of Derby, and for selling a certain piece of waste ground situate within the said borough, called Nun's Green, towards defraying the expense of the said improvements. [32 Geo. 3, c. 78.]

An Act for better paving and otherwise improving the borough of Derby. [6 Geo. 4, c. 132.]

DEVIZES.—An Act for amending, regulating, cleansing, lighting, watching, and keeping in repair the streets, lanes, and passages within the borough of The Devizes in the county of Wilts, and for preventing nuisances, annoyances, and obstructions therein. [21 Geo. 3, c. 36.]

An act for paving, lighting, cleansing, watching, and improving the borough of Devizes in the county of Wilts, and for removing and preventing nuisances and annoyances therein. [6 Geo. 4, c. 162]

DONCASTER.—An Act for repealing so much of an Act passed in the fourth year of the reign of his present Majesty as relates to the lighting the streets and places within the borough and soke of Doncaster in the county of York; and for more effectually lighting, watching, and otherwise improving the said borough, and for preventing nuisances therein. [43 Geo. 3, c. 147.]

DORCHESTER.—An Act for better cleansing, lighting, and watching the streets, lanes, and other public passages within the borough of Dorchester in the county of Dorset, and in the tithing of Colliton-row in the town of Dorchester aforesaid; for paving the footways and repairing certain horseways of such parts thereof as are turnpike, and for paving the footways and repairing the horseways of such parts thereof as are not turnpike; for removing nuisances, annoyances, and obstructions therein; and for preventing houses or buildings hereafter to be erected in the said borough and tithing from being thatched. [16 Geo. 3, c 27.]

An Act for better paving, cleansing, lighting, watching, watering, and otherwise improving the streets and other public passages and places within the borough of Dorchester in the county of Dorset, and the tithing of Colliton-row in the town of Dorchester aforesaid. [4 Will. 4, 22 May.]

DOVOR.—An Act for better paving, cleansing, lighting, and watching the streets and lanes in the town of Dover in the county of Kent, and in the several parishes of Saint Mary the Virgin and Saint James the Apostle in the said town and county; and for removing and preventing nuisances and annoyances therein. [18 Geo. 3, c. 76.]

An Act to amend an Act made in the eighteenth year of his present Majesty, for paving, cleansing, lighting, and watching the town of Dovor, and

5 & 6 Will. 4, c. 76.

for removing and preventing nuisances and annoyances therein. [50 Geo. 3, c. 26.]

An Act to amend two Acts of his late Majesty, for paving, cleansing, lighting, and watching the town of Dover, and for removing and preventing nuisances and annoyances therein. [11 Geo. 4, c. 117.]

DURHAM.—An Act for paving, cleansing, lighting, watching, and regulating the streets, lanes, ways, and public passages and places within the city of Durham and borough of Framwelgate, and the suburbs thereof, and the streets thereto adjoining; for removing and preventing nuisances, annoyances, encroachments, and obstructions therein; for widening and rendering more commodious several of the said streets, lanes, ways, and public passages and places, and for regulating and improving the markets within the said city and suburbs. [30 Geo. 3, c. 67.]

EVESHAM.—An Act for paving, cleansing, lighting, watching, regulating, and improving the borough of Evesham in the county of Worcester; for repairing, improving, and maintaining the bridge over the river Avon within the said borough; and for selling certain waste lands within the said borough, and for appropriating the monies arising from such sales towards the purposes therein mentioned. [3 Geo. 4, c. 67.]

EXETER.—An Act for enlightening the streets within the city of Exeter and suburbs thereof. [1 Geo. 3.]

An Act for better repairing the streets, lanes, and passages within the city of Exeter and county of the said city; and for amending an Act passed in the first year of his present Majesty, intituled "An Act for enlightening the streets within the city of Exeter and suburbs thereof;" and for the better regulating of the watch within the said city and county, and for otherwise improving the same. [46 Geo. 3, c. 39.]

An Act for better and more effectually paving, lighting, cleansing, watching, and otherwise improving the streets, ways, and other public passages and places in the city and county of the city of Exeter. [50 Geo. 3, c. 146.]

An Act for better paving, lighting, watching, cleansing, and otherwise improving the city of Exeter and county of the same city. [2 & 3 Will. 4, c. 106.]

FAVERSHAM.—An Act for the better paving, repairing, cleansing, lighting, and watching the highways, streets, lanes, and other public passages and places within the town and liberty of Faversham in the county of Kent, and also certain places near or adjoining thereto; and for removing and preventing encroachments, obstructions, nuisances, and annoyances therein. [29 Geo. 3, c. 69.]

FOLKESTONE.—An Act for paving, repairing, and cleansing the highways, streets, and lanes in the town of Folkestone, and liberties thereof, in the county of Kent, and for removing and preventing nuisances and annoyances therein. [36 Geo. 3, c. 49.]

GATESHEAD.—An Act for cleansing, lighting, and otherwise improving certain streets and places within and near the town and borough of Gateshead in the county of Durham. [54 Geo. 3, c 109.]

GLASTONBURY.—An Act for paving and improving the streets and other public passages and places in the parishes of Saint John the Baptist and Saint Benedict in the town of Glastonbury in the county of Somerset. [51 Geo. 3, c. 173.]

GLOUCESTER.—An Act for the more effectual relief and employment of the poor within the city of Gloucester, and for lighting the streets of the said city. [4 Geo. 3, c. .]

An Act for rebuilding the bridge over the river Severn at Maisemore, near the city of Gloucester; for raising, widening, and securing Over's Causeway leading from the said city towards Maisemore aforesaid; and for enforcing the proper paving and cleansing of the several streets within the said city, and for removing nuisances and annoyances therefrom, and preventing the like in future. [17 Geo. 3, c. 68.]

An Act for erecting a new gaol, and for removing certain gateways, in the city of Gloucester, and for amending the several Acts passed for the maintenance and support of the poor of the said city, and for lighting, paving, and regulating the streets there. [21 Geo. 3, c. 74.]

An Act for establishing a proper place for holding markets and fairs for the sale of live stock in the city of Gloucester and the suburbs thereof, and

for opening convenient avenues thereto, and for watching and otherwise improving the said city. [1 & 2 Geo. 4, c. 22.] 5 & 6 Will. 4, c. 76.

An Act to provide for lighting the suburbs of the city of Gloucester with gas. [4 Will. 4, c. 44.]

GODALMING.—An Act for paving, lighting, watching, and otherwise improving the town of Godalming in the county of Surrey. [6 Geo. 4, c. 177.]

GRAVESEND.—An Act for paving, cleansing, and lighting the High Street, East Street, and West Street in the town and parishes of Gravesend and Milton, in the county of Kent, and for lighting the other streets; and for removing all encroachments and annoyances within the said town and parishes. [13 Geo. 3, c. 15.]

An Act for altering and enlarging the powers of an act of the thirteenth year of his present Majesty, for improving the town and parishes of Gravesend and Milton in the county of Kent; and for the better assessment and collection of the poor rates and other rates within the parish of Gravesend. [56 Geo. 3, c. 77.]

An Act for paving, cleansing, lighting, watching, and improving the town and parishes of Gravesend and Milton in the county of Kent, and for removing and preventing nuisances and annoyances therein. [3 Geo. 4, c. 51.]

GUILDFORD.—An Act, establishing, regulating, and maintaining a nightly watch, and for enlightening the open places and streets, within the town of Guildford in the county of Surrey. [32 Geo. 2.]

An Act for paving, cleansing, and otherwise improving the town of Guildford in the county of Surrey. [52 Geo. 3, c. 51.]

HARWICH.—An Act for paving, cleansing, lighting, and watching the town of Harwich in the county of Essex, and supplying the same with water. [59 Geo. 3, c. 118.]

HASTINGS.—An Act for better paving, lighting, watching, and otherwise improving the town of Saint Leonard in the county of Sussex. [2 Will. 4, c. 45.]

An Act for paving, lighting, watching, cleansing, and improving the town and port of Hastings in the county of Sussex, and for establishing and regulating markets therein, and supplying the inhabitants thereof with water, and for other purposes. [2 Will. 4, c. 91.]

HEREFORD.—An Act for paving, repairing, cleansing, and lighting the streets and lanes in the city of Hereford and suburbs thereof, and removing nuisances and annoyances therein, and for creating a fund towards the expenses thereof, by inclosing divers waste grounds within the liberties of the said city, and for the better application of charity money; for setting the poor people of the said city to work; and to enable bodies corporate to alienate their houses and lands within the said city. [14 Geo. 3, c. 38.]

An Act to enlarge, amend, and render more effectual the provisions of an Act of his present Majesty, for paving and lighting the city of Hereford, and removing nuisances therein; and for enabling the corporation of the said city to sell and apply the produce of certain messuages and lands in establishing market places and otherwise improving the said city. [56 Geo. 3, c. 23.]

HERTFORD.—An Act for paving the footways, and cleansing, lighting, and watching the streets and other public passages and places within the borough of Hertford, and removing and preventing obstructions, nuisances, and annoyances therein. [28 Geo. 3, c. 75.]

An Act to amend and extend the provisions of an Act for paving and improving the streets and other public passages and places within the borough of Hertford. [9 Geo. 4, c. 38.]

HUNTINGDON.—An Act for paving, cleansing, and lighting the High-street and other places within the town of Huntingdon, and for removing and preventing nuisances and annoyances therein. [25 Geo. 3, c. 9.]

HYTHE.—An Act for paving, repairing, cleansing, lighting, and watching the highways, streets, and lanes in the town and port of Hythe and liberty thereof in the county of Kent, and for removing and preventing nuisances and annoyances therein. [38 Geo. 3, c. 16.]

IPSWICH.—An Act for the pavyng of the towne of Ipswiche. [13 Eliz. c. 24.]

An Act for paving, lighting, cleansing, and otherwise improving the town of Ipswich in the county of Suffolk, and for removing and preventing encroachments, obstructions, and annoyances therein. [33 Geo. 3, c. 92.]

An Act for amending and rendering more effectual an Act passed in the thirty-third year of the reign of his present Majesty, for paving, lighting,

5 & 6 Will. 4, c. 76.

cleansing, and otherwise improving the town of Ipswich in the county of Suffolk, and for removing and preventing encroachments, obstructions, and annoyances therein. [37 Geo. 3, c. 44.]

An Act for amending and enlarging the powers of two Acts of his present Majesty, for paving, lighting, cleansing, and improving the town of Ipswich in the county of Suffolk, and removing and preventing encroachments, obstructions, and annoyances therein; and for watching the said town. [55 Geo. 3, c. 26.]

An Act to alter and amend several Acts of his late Majesty's reign, for paving, lighting, and otherwise improving the town of Ipswich in the county of Suffolk. [1 & 2 Geo. 4, c. 104.]

KINGSTON-UPON-HULL.—An Act for explaining, amending, and making more effectual several Acts of Parliament relating to the maintenance and employment of the poor of the town of Kingstone-upon-Hull; and for better paving, preserving, and cleansing the streets, squares, lanes, and alleys in the said town, and preventing obstructions therein; and for preserving the lamps which shall be set up to enlighten the streets of the said town, and securing the property of such lamps to the owners. [28 Geo. 2, c. 27.]

An Act to amend and render more effectual several acts made for cleansing and enlightening the streets of the town of Kingstone-upon-Hull, and for preventing annoyances therein. [2 Geo. 3.]

An Act for amending and supplying the deficiencies of an Act passed in the second year of the reign of his present Majesty King George the Third, intituled "An Act to amend and render more effectual several Acts made for cleansing and enlightening the streets of the town of Kingstone-upon-Hull, and for preventing annoyances therein." [4 Geo. 3.]

An Act for building a new gaol for the town and county of the town of Kingstone-upon-Hull, and for purchasing an additional burial-ground for the use of the parish of the Holy Trinity in the said town; for regulating the affairs of hackney coachmen, chairmen, and porters, and the prices of carriage of goods; for altering the time of lighting lamps; for ascertaining the breadth of party walls, and for preventing certain nuisances within the said town, liberties, and precincts thereof; for amending an Act of the fourteenth year of the reign of his present Majesty, for making and establishing public quays or wharfs at Kingstone-upon-Hull, in respect to such as are or may be built opposite to certain staiths in the said Act described, and for other purposes. [23 Geo. 3, c. 55.]

An Act for paving, cleansing, lighting, watching, and regulating the streets, squares, lanes, and other public passages and places within the parish of Sealcotes in the East Riding of York, and for removing and preventing nuisances, annoyances, encroachments, and obstructions, and for licensing and regulating hackney coaches, chairs, porters, coal carriers and water carriers, trucks, carts, and other carriages within the said parish. [41 Geo. 3, c. 30.]

An Act for watching, and more effectually lighting, cleansing, and otherwise improving the town of Kingstone-upon-Hull, and the liberty of Trippett and the lordship of Mytton in the parish of the Holy Trinity in the said town, and for preventing nuisances therein; and also for preventing frauds and impositions in the quality, measure, and carriage of coals sold in the said town and the neighbourhood thereof. [50 Geo. 3, c. 41.]

KIDDERMINSTER.—An Act for paving, cleansing, lighting, watching, and otherwise improving the streets and other public passages and places in Kidderminster in the county of Worcester. [53 Geo. 3, c. 83.]

KINGSTON-UPON-THAMES.—An Act for the better lighting and watching the town of Kingstone-upon-Thames in the county of Surrey, and for removing and preventing all obstructions, encroachments, and nuisances therein. [13 Geo. 3, c. 61.]

KING'S LYNN.—An Act for paving, cleansing, lighting, and watching, and improving the borough of King's Lynn in the county of Norfolk, and for removing nuisances and annoyances therein; and for holding the Saturday and beast markets within more convenient parts of the said borough. [43 Geo. 3, c. 37.]

LANCASTER.—An Act for lighting, watching, paving, cleansing, and improving the streets, highways, and places within the borough and town of Lancaster in the county palatine of Lancaster. [5 Geo. 4, c. 66.]

LEEDS.—An Act for better supplying the town and neighbourhood of Leeds in

the county of York with water; and for more effectually lighting and cleansing the streets and other places within the said town and neighbourhood, and removing and preventing nuisances, annoyances, encroachments, and obstructions therein. [30 Geo. 3, c. 68.]

An Act to amend and enlarge the powers of an Act passed in the thirtieth year of his present Majesty, for better supplying the town and neighbourhood of Leeds in the county of York with water, and for more effectually lighting and cleansing the streets and other places within the said town and neighbourhood, and for removing and preventing nuisances and annoyances therein; and for erecting a court house and prison for the borough of Leeds; and for widening and improving the streets and passages in the said town. [49 Geo. 3, c. 122.]

An Act to amend and enlarge the powers and provisions of an Act of his present Majesty, for erecting a court house and prison for the borough of Leeds in the county of York and other purposes, to provide for the expense of the prosecution of felons in certain cases, and to establish a police and nightly watch in the town, borough and neighbourhood of Leeds aforesaid. [55 Geo. 3, c. 42.]

An Act for lighting, cleansing, and improving the town and neighbourhood of Leeds in the county of York. [5 Geo. 4, c. 124.]

LEOMINSTER.—An Act for enclosing lands in the borough of Leominster in the county of Hereford, and in the township of Luston in the parish of Eye, in the said county; and for paving and otherwise improving the streets and other public places within the town of Leominster in the said county. [48 Geo. 3, c. 148.]

LICHFIELD.—An Act for paving, cleansing, lighting, watching, and regulating the streets, lanes, and other public passages and places within the city of Lichfield and the suburbs thereof. [46 Geo. 3, c. 42.]

LINCOLN.—An Act for paving, lighting, watching, and improving the city of Lincoln and the bail and close of Lincoln, and for regulating the police thereof. [9 Geo. 4, c. 27.]

LIVERPOOL.—An Act for the building a church in the town of Liverpool in the county palatine of Lancaster, and for enlightening and cleansing the streets of the said town, and for keeping and maintaining a nightly watch there. [21 Geo. 2, c. 24.]

An Act for opening, making, widening, and altering certain streets, passages, and places within the town of Liverpool in the county palatine of Lancaster; for supplying the said town with fresh and wholesome water; for removing and preventing nuisances and annoyances therein; for appointing additional market places; and for extending so much of the powers of an Act of the second year of his present Majesty as relates to hackney coachmen, chairmen, carters, and porters, to a certain distance beyond the liberties of the said town. [26 Geo. 3, c. 12.]

An Act for enlarging and varying some of the powers contained in certain Acts of parliament relating to the lighting, watching, and cleansing the streets and other places within the town of Liverpool, and for removing and preventing nuisances and annoyances therein. [28 Geo. 3, c. 13.]

An Act for the reviving, extending, and varying the powers of an Act passed in the twenty-sixth year of his late Majesty King George the Third, for making and widening certain streets, passages, and places in the town of Liverpool in the county palatine of Lancaster, and for several other purposes in the said Act mentioned; and also for further improving the said town. [1 Geo. 4, c. 13.]

An Act for widening and improving certain streets in the town of Liverpool in the county palatine of Lancaster; for the further prevention of nuisances and annoyances in the said town; for the regulation of weighing machines, weights and measures; and the establishment of a fire police therein. [7 Geo. 4, c. 57.]

An Act for the better pavage and sewerage of the town of Liverpool in the county palatine of Lancaster; and for settling the boundaries of the said town and the township of Kirkdale, and parts of the townships of Everton and West Derby. [11 Geo. 4, c. 15.]

LOUTH.—An Act for paving, lighting, watching, cleansing, regulating, and otherwise improving the town and parish of Louth in the county of Lincoln. [6 Geo. 4, c. 129.]

5 & 6 Will. 4, c. 76.

LUDLOW.—An Act for paving the footpaths within the borough of Ludlow in the county of Salop, and for lighting, watching, and otherwise improving the said borough. [33 Geo. 3, c. 25.]

MACCLESFIELD.—An Act for lighting, watching and regulating the police within the borough of Macclesfield in the county of Chester. [54 Geo. 3, c. 23.]

An Act for better lighting, watching, and improving the borough and township of Macclesfield in the county of Chester, and regulating the police thereof. [6 Geo. 4, c. 96.]

An Act for better supplying the inhabitants of the borough of Macclesfield in the county of Chester with water, and to establish the rates payable for the same. [11 Geo. 4, c. 124.]

MAIDSTONE.—An Act for widening, improving, regulating, paving, cleansing, and lighting the streets, lanes, and other public passages and places within the King's town of Maidstone in the county of Kent; for removing and preventing incroachments, obstructions, nuisances, and annoyances therein; for better supplying the said town with water; and for repairing the highways within the parish of Maidstone. [31 Geo. 3, c. 62.]

An Act for altering and amending an Act passed in the thirty-first year of the reign of his present Majesty, intituled "An Act for widening, improving, regulating, paving, cleansing, and lighting the streets, lanes, and other public passages and places within the King's town of Maidstone in the county of Kent; for removing and preventing encroachments, obstructions, nuisances, and annoyances therein; for better supplying the said town with water; and for repairing the highways within the parish of Maidstone; and for raising a further sum of money for completing the purposes of the said Act. [42 Geo. 3, c. 90.]

An Act to enlarge the powers of three Acts of his present Majesty, for paving, cleansing, and lighting the streets and other public places within the King's town of Maidstone in the county of Kent, and better supplying the inhabitants with water; and for watching the said town, and making public wharfs therein. [59 Geo. 3, c. 16.]

MONMOUTH.—An Act for paving the footways, and cleansing, lighting, and watching the streets in the town of Monmouth. [58 Geo. 3, c. 81.]

NEWARK.—An Act for the better paving, lighting, and cleansing of the streets, lanes, and other public passages and places in the town of Newark-upon-Trent in the county of Nottingham, and for removing the market for butchers' meat in the said town, and for regulating the said market; and for repealing an Act made in the twenty-seventh year of the reign of her late Majesty Queen Elizabeth, intituled "An Acte for the pavinge of Newarke-upon-Trent in the countie of Nottingham." [38 Geo. 3, c. 26.]

NEWBURY.—An Act for lighting, watching, paving, cleansing, and improving the streets, highways, and places within the borough, town, and parish of Newbury, and the tithing or hamlet of Speenhamland in the parish of Speen in the county of Berks. [6 Geo. 4, c. 72.]

NEWCASTLE-UNDER-LYME.—An Act for paving, lighting, watching, cleansing, regulating and improving the borough of Newcastle-under-Lyme. [59 Geo. 3, c. 71.]

NEWCASTLE-UPON-TYNE.—An Act for lighting the streets and other places, and maintaining a regular and nightly watch, within the town and county of the town of Newcastle-upon-Tyne; and for regulating the hackney coachmen and chairmen, cartmen, porters and watermen within the same. [3 Geo. 3.]

An Act for widening, enlarging and cleansing the streets, lanes and other public places, and for opening new streets, markets and passages within the town of Newcastle-upon-Tyne and the liberties thereof, and for removing and preventing annoyances therein; and for regulating the public markets, and common stage waggons, drays and carts carrying goods for hire. [26 Geo. 3, c. 39.]

An Act for lighting and watching the streets and other places without the walls, but within the liberties of Newcastle-upon-Tyne. [52 Geo. 3, c. 76.]

NEWPORT (Isle of Wight).—An Act for paving, repairing, cleansing, lighting and watching the streets, lanes, ways, passages and places within the borough of Newport in the Isle of Wight; and for the removal of present and the prevention of future incroachments, nuisances and annoyances therein. [26 Geo. 3, c. 119.]

NEWPORT (Monmouth).—An Act for lighting, watching, paving, cleansing and

improving the streets, highways and places within the town and borough of Newport in the county of Monmouth. [7 Geo. 4, c. 6.] 5 & 6 Will. 4, c. 76.

NORTHAMPTON.—An Act for paving, cleansing, lighting and watching the town of Northampton, and for removing and preventing incroachments, obstructions and annoyances therein. [18 Geo. 3, c. 79.]

An Act for altering and amending an Act passed in the eighteenth year of the reign of his present Majesty, intituled "An Act for paving, cleansing, lighting and watching the town of Northampton, and for removing and preventing incroachments, obstructions and annoyances therein; and for continuing the term of certain tolls by the said Act." [37 Geo. 3, c. 42.]

An Act for better paving, lighting, watching and improving the town of Northampton; and for taking down, widening and rebuilding the bridge over the Nine or Nen, at the south entrance of the said town, and improving the avenues to the said bridge. [54 Geo. 3, c. 193.]

NORWICH.—An Act for better paving, lighting, cleansing, watching and otherwise improving the city of Norwich. [46 Geo. 3, c. 67.]

An Act for amending and enlarging an Act of his late Majesty, for better paving, lighting, cleansing, and otherwise improving the city of Norwich. [6 Geo. 4, c. 78.]

NOTTINGHAM.—An Act for enlightening the streets, lanes and passages within the town and county of the town of Nottingham. [2 Geo. 3.]

An Act to alter, amend and enlarge the powers of an Act of the second year of his late Majesty's reign, intituled "An Act for enlightening the streets, lanes and passages within the town and county of the town of Nottingham." [1 & 2 Geo. 4, c. 70.]

OSWESTRY.—An Act for paving, cleansing, lighting, watching and otherwise improving the streets and other public passages and places in the town and borough of Oswestry in the county of Salop. [49 Geo. 3, c. 140.]

OXFORD.—An Act for amending certain of the mileways leading to Oxford; for making a commodious entrance through the parish of Saint Clement; for rebuilding or repairing Magdalen bridge; for making commodious roads from the said bridge through the University and city and the avenues leading thereto; for cleansing and lighting the streets, lanes and places within the said University and city and the suburbs thereof, and the parish of Saint Clement; for removing nuisances and annoyances therefrom, and preventing the like for the future; for empowering colleges and corporations to alienate their estates there; for removing, holding and regulating markets within the said city; and for other purposes. [11 Geo. 3, c. 19.]

An Act to amend and enlarge the powers of an Act passed in the eleventh year of his present Majesty's reign, for performing several works, and making improvements within the University and city of Oxford and the suburbs thereof, and in the adjoining parish of Saint Clement. [21 Geo. 3, c. 47.]

An Act for enlarging the term and powers of two Acts of his present Majesty, for amending certain mileways leading to Oxford, and making improvements in the University and city of Oxford, the suburbs thereof, and adjoining parish of Saint Clement, and for other purposes. [52 Geo. 3, c. 72.]

An Act for continuing the term and amending and enlarging the powers of three Acts of his Majesty King George the Third, for amending certain mileways leading to Oxford, and making improvements in the University and city of Oxford, the suburbs thereof, and adjoining parish of Saint Clement, and for other purposes in the said Acts mentioned. [5 & 6 Will. 4, c. .]

PEMBROKE.—An Act for supplying with water the town of Pembroke and the neighbourhood thereof, within the county of Pembroke. [9 Geo. 4, c. 119.]

PLYMOUTH.—An Act for improving the town of Plymouth in the county of Devon. [51 Geo. 3, c. 102.]

An Act for better paving, lighting, cleansing, watching and improving the town and borough of Plymouth in the county of Devon, and for regulating the police thereof, and for removing and preventing nuisances and annoyances therein. [5 Geo. 4, c. 22.]

PONTEFRACT.—An Act for paving and otherwise improving the streets and other public passages within the town of Pontefract in the county of York; for better supplying the said town with water; and for altering and amending an Act passed in the twentieth year of his present Majesty, intituled "An Act for dividing the park of Pontefract in the county of York, and for other purposes mentioned therein." [50 Geo. 3, c. 40.]

5 & 6 Will. 4, c. 76.

PORTSMOUTH.—An Act for the better paving and cleansing the streets and other public passages in the town of Portsmouth in the county of Southampton, and for preventing nuisances and annoyances therein, and for widening and rendering the same more commodious. [8 Geo. 3.]

An Act for lighting and watching the town of Portsmouth in the county of Southampton; and for explaining and amending an Act passed in the eighth year of his present Majesty's reign, for the better paving and cleansing the streets and other public passages in the said town, and for preventing nuisances and annoyances therein, and for widening and rendering the same more commodious. [16 Geo. 3, c. 59.]

An Act for the better paving, cleansing, widening and regulating the streets, courts, roads, lanes, ways, rows, alleys and public passages and places within the town of Portsea in the county of Southampton, and for removing and preventing nuisances, annoyances and obstructions within the said town. [32 Geo. 3, c. 103.]

An Act for better lighting and watching the town of Portsea in the county of Southampton; and for amending an Act passed in the thirty-second year of his late Majesty, for paving, cleansing and regulating the streets and public places within the said town, and removing and preventing nuisances and annoyances therein. [7 Geo. 4, c. 64.]

PRESTON.—An act to light, watch, pave, cleanse and improve the streets, highways and places within the borough of Preston in the county palatine of Lancaster, and to provide fire engines and firemen for the protection of the said borough. [55 Geo. 3, c. 22.]

READING.—An act for better paving, lighting, cleansing, watching and otherwise improving the borough of Reading in the county of Berks. [7 Geo. 4, c. 56.]

ROCHESTER.—An Act for paving, cleansing, lighting and watching the high streets and lanes in the parish of Saint Nicholas, within the city of Rochester, and parish of Strood in the county of Kent, and for making a road through Star Lane, across certain fields adjoining thereto, to Chatham Hill in the said county. [9 Geo. 3, c. 32.]

SANDWICH.—An act for the better repairing, paving, cleansing, lighting and watching the highways, streets and lanes of and in the town and port of Sandwich in the county of Kent, and in the several parishes of Saint Peter the Apostle, Saint Mary the Virgin, and Saint Clement, in the said town, port and county; and for removing and preventing incroachments, nuisances, obstructions and annoyances in the said highways, streets and lanes, and on the common quay belonging to the said town and port and in the haven adjoining to the said quay, and the bridge built over the said haven; and for regulating the berths and mooring places of vessels at the said quay, and the proper times for vessels to pass through the said bridge. [27 Geo. 3, c. 67.]

SARUM, NEW.—An Act for the better repairing and paving the highways, streets, and watercourses within the city of New Sarum; and for enlightening the streets, lanes, and passages, and better regulating the nightly watch within the said city. [10 Geo. 2.]

An Act to alter, extend, and amend the powers of two Acts passed in the tenth year of the reign of his late Majesty King George the Second, and in the twelfth year of the reign of his present Majesty, for better paving, lighting, and watching the city of New Sarum in the county of Wilts. [55 Geo. 3, c. 23.]

SCARBOROUGH.—An Act for paving and otherwise improving the streets and other places in the township of Scarborough in the north riding of the county of York, and for licensing hackney coaches and establishing other regulations in the said township. [41 Geo. 3, c. 94.]

SHREWSBURY.—An Act for the better paving and amending, cleansing, enlightening, and watching the streets, highways, lanes, and passages within the town of Shrewsbury in the county of Salop. [29 Geo. 2, c. 78.]

An Act for repealing an Act passed in the twenty-ninth year of the reign of his Majesty King George the Second, for paving, lighting, and watching the town of Shrewsbury in the county of Salop; and for granting other powers in lieu thereof. [1 & 2 Geo. 4, c. 58.]

SOUTHAMPTON.—An Act for the better paving, repairing, and cleansing the streets and other public passages in the several parishes and wards of Saint Michael, Saint John, Holy Rood, Saint Lawrence, All Saints-within-the-Bar, All Saints-without-the-Bar, and East Street and Bay Row, within the town of Southampton and liberties thereof, and for preventing nuisances and

annoyances therein; and for widening and rendering the same more commodious, and for lighting and watching the said streets and public passages. [10 Geo. 3, c. 25.] 5 & 6 Will. 4, c. 76.

An Act to amend an Act made in the tenth year of his present Majesty, for paving, repairing, cleansing, lighting, and watching the streets and other public passages in the town of Southampton. [50 Geo. 3, c. 169.]

STAFFORD.—An Act for paving, lighting, watching, cleansing, regulating, and improving the streets, lanes, and other public passages and places within the borough of Stafford in the county of Stafford. [11 Geo. 4, c. 44.]

ST. ALBAN'S.—An Act for paving the footways and cross paths, and for cleansing, lighting, watching, and regulating the streets and other public passages and places, within the borough of St. Alban in the county of Hertford. [44 Geo. 3, c. 8.]

STOCKPORT.—An Act for lighting, cleansing, watching, and otherwise improving the streets, lanes, and other public passages and places within the town of Stockport, in the county palatine of Chester; and for regulating the police of the said town. [7 Geo. 4, c. 118.]

STOCKTON.—An Act for lighting, cleansing, and otherwise improving the town and borough of Stockton in the county of Durham. [1 Geo. 4, c. 62.]

SUNDERLAND.—An Act for lighting and watching the town of Bishop Wearmouth and Bishop Wearmouth Panns, for cleansing, paving, and regulating the footpaths, and for removing and preventing nuisances and encroachments therein. [50 Geo. 3, c. 25.]

An Act for paving, lighting, watching, and cleansing the town of Sunderland near the sea in the county of Durham; for removing the market; for building a town-hall or market-house; and for otherwise improving the said town; and for establishing a watch on the river Wear. [50 Geo. 3, c. 27.]

An Act for paving, lighting, watching, cleansing, and improving the town and parish of Sunderland near the sea, in the county of Durham, for removing the market, and for otherwise improving the said town. [7 Geo. 4, c. 120.]

SWANSEA.—An Act for better paving, repairing, cleansing, lighting, and watching the several streets and other public passages and places within the town and franchise of Swansea, in the county of Glamorgan, and for removing and preventing nuisances, annoyances, and obstructions therein. [49 Geo. 3, c. 79.]

TEWKESBURY.—An Act for paving, repairing, cleansing, lighting, and watching the streets, lanes, ways, passages, and places within the town of Tewkesbury, and the precincts thereof, in the county of Gloucester; for the removal of present and prevention of future encroachments, nuisances, and annoyances therein; for regulating carts, and other carriages, and ascertaining the rates of carriage; and for widening some part of the street called Church-street, within the said town. [26 Geo. 3, c. 17.]

TIVERTON.—An Act for the better and more easy rebuilding of the town of Tiverton in the county of Devon, and for determining differences touching houses and buildings burnt down or demolished by reason of the late dreadful fire there, and for the better preventing dangers from fire for the future. [5 Geo. 2.]

An Act for paving and otherwise improving the town of Tiverton in the county of Devon. [34 Geo. 3, c. 52.]

An Act for amending and enlarging the powers and provisions of an Act of his late Majesty King George the Third, intituled "An Act for paving and otherwise improving the town of Tiverton in the county of Devon, and for lighting the said town." [3 Geo. 4, c. 60.]

TRURO.—An Act for paving, cleansing, lighting, and widening the streets, lanes, and passages, for removing and preventing encroachments, nuisances, and annoyances, and for regulating the porters and drivers of carts, within the borough of Truro, and part of the adjoining parishes, in the county of Cornwall. [30 Geo. 3, c. 62.]

WALLINGFORD.—An Act for paving the footways, and for cleansing, lighting, watching, and regulating the streets, lanes, passages, and places, within the borough of Wallingford in the county of Berks, and for removing and preventing nuisances, annoyances, encroachments, and obstructions therein. [35 Geo. 3, c. 75.]

WALSALL.—An Act for paving, lighting, watching, cleansing, widening, regulating, and otherwise improving the town of Walsall, and the neighbourhood

5 & 6 Will. 4, c. 76.

thereof, within the parish of Walsall in the county of Stafford. [5 Geo. 4, c. 68.]

WELLS.—An Act for more effectually repairing and improving certain roads leading to and from the city or borough of Wells in the county of Somerset; and for paving, cleansing, lighting, watching, and watering the said roads, and the streets, lanes, and public passages within the said city or borough, the liberty of St. Andrew, and suburbs of the said city and borough, and removing and preventing nuisances and annoyances therein. [1 & 2 Geo. 4, c. 12.]

An Act for lighting with gas the city and borough of Wells in the county of Somerset, the liberty of St. Andrew, and suburbs of the said city or borough. [2 Will. 4, c. 37.]

WEYMOUTH AND MELCOMBE REGIS.—An Act for paving, cleansing, lighting, and watching the borough and town of Weymouth and Melcombe Regis in the county of Dorset, and for removing all encroachments, obstructions, and annoyances therein. [16 Geo. 3, c. 57.]

An Act for more effectually cleansing, lighting, and watching the borough and town of Weymouth and Melcombe Regis in the county of Dorset, and removing encroachments and annoyances therein; for licensing and regulating chairmen and other persons plying for hire, for establishing markets, and for giving further powers to the quay master of the harbour of the said town. [50 Geo. 3, c. 187.]

WINCHESTER.—An Act for the better paving, repairing, cleansing, lighting, and watching the streets and other public passages within the city of Winchester, and also within the several parishes of Saint Bartholomew Hide, Saint John's in the Soke, Saint Peter's Cheesehill, Saint Swithin, and Saint Michael in the West Soke, in the suburbs of the said city; and for preventing nuisances and annoyances therein, and for widening and rendering the same more commodious. [11 Geo. 3, c. 9.]

An Act for amending and enlarging the powers of an Act of his present Majesty, for paving, cleansing, lighting, and watching the streets and public passages in the city of Winchester, and several parishes in the suburbs thereof, and for removing and preventing nuisances therein. [48 Geo. 3, c. 2.]

WINDSOR.—An Act for the better paving, cleansing, lighting, and watching the streets and lanes in the parish and borough of New Windsor in the county of Berks, and for preventing nuisances and annoyances therein. [9 Geo. 3, c. 10.]

WISBEACH.—An Act for the establishing a cattle market within the town of Wisbech in the Isle of Ely; for taking down and removing shambles therein; for paving, cleansing, lighting, and watching the said town, and removing nuisances therein; for preserving and improving the port and harbour of Wisbech, and for regulating the pilots belonging thereto. [50 Geo. 3, c. 206.]

WORCESTER.—An Act for better supplying the city of Worcester and the liberties thereof with water; and for more effectually paving, lighting, watching, and otherwise improving the said city. [4 Geo. 4, c. 69.]

YARMOUTH (Great).—An Act for better paving, lighting, cleansing, and watching the town of Great Yarmouth in the county of Norfolk, and for removing nuisances and annoyances therein, and for making other improvements in the said town. [50 Geo. 3, c. 23.]

YORK.—An Act for paving, lighting, watching, and improving the city of York and the suburbs thereof, and the liberty of Saint Peter within the said city, and for regulating the police of the same respectively. [6 Geo. 4, c. 127.]

An Act for improving and enlarging the market places within the city of York, and rendering the approaches thereto more commodious; and for regulating and maintaining the several markets and fairs held within the same city and the suburbs thereof; and for amending an Act of his late Majesty, for paving, lighting, watching, and improving the said city; and other purposes. [3 Will. 4, c. 62.]

Indictment on 5 & 6 Will. 4, c. 76, s. 34, against a voter at an election of councillors for a borough (see *ante*, 70).

City of Oxford in the county of O., to wit. } *THE jurors for our Lady the Queen upon their oath present, that heretofore, to wit, on the day of , in the year of the reign of our Lady the now Queen Victoria the First, at the borough of O. in the county of O , at a certain election of coun-*

cillors within and for the said borough, then and there duly held according to the provisions of the statute made and passed in the sixth year of the reign of our late sovereign William the Fourth for the regulation of Municipal Corporations in England and Wales, T. W., late of the parish of , in the county of O., labourer, then and there appeared as a voter at the said election, before T. T., Esq. then and there being an alderman of the said borough, and the presiding officer duly authorized and empowered in that behalf by M. M. Esq., being the mayor of the said borough, and the said T. T. being then and there duly authorized and empowered to receive the vote of the said T. W. in that behalf, and the said T. W. then and there delivered to the said T. T., and (the said T. T. being then and there duly authorized and empowered to take and receive the same) pursuant to the statute in that case made and provided, a certain voting paper as and for the voting paper of the said T. W., purporting to contain the christian and surnames of the persons for whom one T. L. therein described as of C. place in the parish of St. Thomas in the said borough, voted with their respective places of abode and descriptions, and purporting to be and being signed by and with the name of the said T. L., and with the name of the place in which the property for which the said T. L. appeared to be rated on the burgess roll was situated. And the jurors aforesaid, on their oath aforesaid, do further present that the said T. T., then and there being such presiding officer, and duly authorized and empowered in that behalf, according to the statute, did then and there at the time of the said T. W. delivering in his said voting paper as aforesaid, and not afterwards, put to the said T. W. being then and there required by B. B. and C. D., being two burgesses entitled to vote at the said election in the same borough, the following question, that is to say:—"Are you the same person whose name is signed as T. L. to the voting paper now delivered in by you?" then and there meaning the said voting paper so delivered in by the said T. W. as aforesaid, to which question the said T. W. then and there unlawfully and wilfully did falsely answer, "I am." Whereas in truth and in fact the said T. W. was not the person whose name was signed as T. L. to the said voting paper so delivered in and by the said T. W., but then and there was another and different person; against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

5 & 6 Will. 4, c. 76.

Borough of E. in the county of W. } *THE information and complaint of T. N. F., Esq., the mayor of the said borough for and on behalf of himself and the council of the said borough, taken on oath before me, J. M. G. C., Esq., one of her Majesty's justices of the peace for the said borough, this ——— day of ———, 18—.*

Information under sect. 60, *ante*, 51.

Who saith, that W. B., now residing in the parish of B. in the said borough, cordwainer, late the public crier for the said borough, and as such crier and officer of the said council, but who has lately been removed from such office of crier, has now in his possession a bell used by him in his said office, the property of the said council of the said borough, and that on the ——— day of ——— instant a notice in writing, directed to the said W. B. under the hands of this complainant as mayor of the said borough, and of J. A., A. N., and T. W., three of the council of the said borough, directing the said W. B. to deliver to Mr. J. T., the town clerk of the said borough, who was thereby authorized to receive the same, the said bell lately used by him the said W. B. in the said office of crier, was personally served upon the said W. B., and that ever since the service of the said notice on the said W. B., he the said W. B. has wilfully neglected to deliver the said bell to the said J. T. as required by the said notice, nor hath the said W. B. given any satisfaction to the said council, or to the said J. T., concerning the said bell against the form of the statute in that case made and provided; and this informant, therefore, prays that a warrant may be issued to apprehend and bring the said W. B. before two or more of her Majesty's justices of the peace to answer unto this information and complaint, and to be further dealt with according to law.

"Taken and sworn before *T. N. F.*
J. M G. C."

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5 & 6 Will. 4, c. 76.

Warrant of commitment under sect. 60.

To the constable of the borough of E. in the county of W. and to the keeper of her Majesty's gaol at W. in the said county, or his deputy.

Whereas it has been made to appear, and hath been fully proved on oath before us the undersigned J. L. and W. T., being two of her Majesty's justices of the peace in and for the said borough, and the undersigned J. A. being one of her Majesty's justices of the peace in and for the said county to our satisfaction; and we the said justices have adjudged and determined, and do adjudge and determine, that W. B., now residing in the parish of B. in the said borough, cordwainer, was late the public crier for the said borough, and, as such crier, was an officer of the council of the said borough, and that he has lately been removed from his said office of crier, and that the said W. B. has now in his possession a bell lately used by him in his said office, the property of the council of the said borough, and that on the ——— day of ——— instant a notice in writing directed to the said W. B. under the hand of T. N. F., Esq., mayor of the said borough, and of J. A., W. N., and T. W., three of the council of the said borough, directing the said W. B. to deliver to Mr. J. T., the town clerk of the said borough, and who was thereby authorized to receive the same, the said bell lately used by him the said W. B., in his said office of crier of the said borough, was personally served upon the said W. B., and that ever since the service of the said notice on the said W. B., he the said W. B. has wilfully neglected to deliver the said bell to the said J. T., as required by the said notice, or to give any satisfaction to the said council or to the said J. T. concerning the said bell against the form of the statute &c. whereof the said W. B. is duly convicted by us the said justices: These are, therefore, in her Majesty's name, to command you, the said constable, to convey the said W. B. to the said keeper, and you, the said keeper, are hereby required to receive the said W. B. into your custody into the said gaol, and him there safely keep without bail until he shall deliver up the said bell, or give satisfaction in respect thereof to the said council or to the said J. T., and, for so doing, this shall be your sufficient warrant given under our hands ———, 18—.

(*Signed by the three Justices.*)

ADDENDA TO TITLE "CORPORATIONS."

The bill referred to *ante*, p. 69, has been passed, and by the 5 & 6 Vict. c. 104, (10th August, 1842) intituled, "An Act to explain and amend certain Enactments contained respectively in the Acts for the Regulation of Municipal Corporations in England and Wales, and in Ireland," after reciting that by an act passed in the session of Parliament held in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," it was (amongst other things) enacted, "That no person shall be qualified to be elected or to be a councillor or an alderman of any borough during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council of such borough, during such time as he shall hold any office or place of profit, other than mayor, in the gift or disposal of the council of such borough: and that by another act passed in the session of Parliament held in the third and fourth years of the reign of her present Majesty, intituled 'An Act for the Regulation of Municipal Corporations in Ireland,' it was (amongst other things) enacted, that no person shall be qualified to be elected or to be a councillor, or an alderman, or a municipal commissioner of any such borough, during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of any such council, commissioners, or charitable trustees of such borough: and that doubts had arisen as to the extent and meaning of the words 'contract' and 'office or place of profit' in the said enactments, and it was expedient that such doubts should be re-

5 & 6 Will. 4, c. 76.

3 & 4 Vict. c. 108.

moved: it was therefore enacted, that from and after the passing of this act the word 'contract' in the said respective enactments shall not extend or be construed to extend to any lease, sale, or purchase of any lands, tenements, or hereditaments, or to any agreement for any such lease, sale, or purchase, or for the loan of money, or to any security for the payment of money only." (See 5 & 6 Will. IV. c. 76, s. 28, *ante*, p. 69).

5 & 6 Vict. c. 104.

The word "contract" not to extend to leases, sales, &c.

2. "That it shall not be lawful for any member of the council of any borough to vote or to take part in the discussion of any matter before the council in which such member shall, directly or indirectly, by himself or his partner or partners, have any pecuniary interest."

Members of council not to take part in discussions if pecuniarily interested.

3. "That immediately from and after the passing of this act it shall be lawful for any person or persons against whom any original writ, suit, action bill, plaint, or information shall have been sued out, commenced, or prosecuted on or before the day of the passing of this act, for the recovery of any pecuniary penalty or penalties incurred under the said enactments (by reason of any extension or construction of the word 'contract' therein contained beyond or different from what is herein enacted) to apply to the court in which such original writ, suit, action, bill, plaint, or information shall have been sued out, commenced, or prosecuted, if such court shall be sitting, or, if such court shall not be sitting, to any judge of one of the superior courts at Westminster or Dublin, as the case may be, for an order that such writ, suit, action, bill, plaint, or information shall be discontinued, upon payment of the costs thereof out of pocket incurred to the time of such application being made, such costs to be taxed according to the practice of such court; and every such court or judge is hereby authorized and required, upon such application, and proof that sufficient notice has been given to the plaintiff or plaintiffs, or to his or their attorney, of the application, to make such order as aforesaid; and upon the making such order, and payment or tender of such costs as aforesaid, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued."

Persons against whom suits have been commenced for penalties respecting contracts may apply to have the same determined, upon payment of the costs.

4. "Provided always, That in all cases in which any such writ, suit, action, bill, plaint, or information sued out or commenced on or before the eighth day of February one thousand eight hundred and forty-two, shall have been renewed or continued before the passing of this act, or upon which any declaration shall have been filed or delivered, or other proceeding had, after the said eighth day of February, and before the passing of this act, it shall be lawful for such court or judge, upon such application and proof as aforesaid, to make such order as aforesaid for discontinuing the same, upon payment of the costs out of pocket of all proceedings had on or before the said eighth day of February, to be taxed as aforesaid, and of such costs out of pocket, if any, of any proceedings had after the said eighth day of February, as the court or judge making such order shall direct; and upon making such order, and upon payment or tender of such costs, such writ, suit, action, bill, plaint, or information shall be forthwith discontinued."

Judges empowered to order suits commenced before the 8th Feb. 1842, to be discontinued, upon payment of costs;

5. "Provided always, that in all cases in which any such writ, suit, action, bill, plaint, or information shall have been sued out or commenced at any time subsequent to the eighth day of February, one thousand eight hundred and forty-two, it shall be competent for such court or judge as aforesaid to make such order as aforesaid for discontinuing the same, without payment of any costs, and upon making such order such writ, suit, action, bill, plaint, or information shall be forthwith discontinued.

and suits commenced subsequent to 8th Feb. 1842 to be discontinued, without payment of costs.

6. "Provided always, that nothing herein contained shall extend or be construed to extend to any action, bill, plaint, or information, or any legal proceeding of any kind whatsoever, in which any judgment shall have passed on or before the day of the passing of this act; but such proceedings may be thereupon had and taken, and any such judgment may be dealt with in all respects, as if this act had not passed.

Act not to extend to any action in which judgment has passed.

5 & 6 Vict. c. 104.

Councillors &c. not to be disqualified on account of having an interest in any lease of lands, &c.

7. "That from and after the passing of this act no municipal commissioner, councillor, alderman, or mayor, in any municipal corporation within the provisions of either of the said acts, shall be deemed to have been or to be disqualified to be elected or to be such municipal commissioner, councillor, alderman, or mayor, by reason only of his having or having had, directly or indirectly, by himself or his partner, any share or interest in any lease, sale, or purchase of any lands, tenements, or hereditaments, or any agreement for any such lease, sale, or purchase, or for the loan of money, or in any security for the payment of money only, but all elections of municipal commissioners, councillors, aldermen, or mayors, as aforesaid, shall be deemed and taken to be and to have been valid (unless in cases where judgment may have been obtained before the passing of this act), notwithstanding any such share or interest in any matters herein last aforesaid."

Office of sheriff not to be deemed an office of profit.

8. "That from and after the passing of this act the office of sheriff of any city, town, county of a city or county of a town, (wherein the council are empowered by law to appoint a fit person to execute the office of sheriff,) shall not be deemed to be an office or place of profit within the meaning of the said act so as to create any disqualification for any office in the said act mentioned." See 5 & 6 Will. IV. c. 76, s. 28, *ante*, p. 69.

Correction. *How far a Correction is Justified in Battery, see ante, Vol. I.*

Correction, House of. *See "Gaol," Vol. III.*

Corruption of Blood. *See "Attainder," Vol. I.*

Costs.

I. *Of Prosecutor and Witnesses on Prosecutions by Indictment,* p. 172.
[7 Geo. IV. c. 64, ss. 22, 23, 24, 25, 26, 27; 4 & 5 Will. IV. c. 56, s. 12; 5 & 6 Will. IV. c. 76, s. 113.]

II. *Of Defendant on Prosecution by Indictment,* 178.
[14 Geo. III. c. 20· 55 Geo. III. c. 50, s. 4.]

III. *On Convictions and Summary Proceedings before Justices,* 179.
[18 Geo. III. c. 19.]

IV. *Of Carrying a Prisoner to Gaol,* 180; *and see* "Commitment for Safe Custody," *Vol. I.*

V. *Of Constables, and in other cases,* 180.

VI. *Forms,* 181.

I. Of Prosecutor and Witnesses in Prosecutions by Indictment.

Prosecutor's costs at common law.

At common law, as it is a general principle that the King neither pays nor receives costs, and as an indictment, though carried on by an individual, is always considered as his suit, no costs are payable, whatever may be the event of the prosecution (*Hullock*, 557); and therefore

1. *Of Prosecutor, &c.*

even in cases where the costs are afterwards allowed, throughout the whole of the proceedings the prosecutor must defray his own expenses, and the court will not allow him to proceed in *formâ pauperis*, unless some special ground be laid for the application. (3 *Burr.* 1308; *Com. Dig. Formâ Pauperis*). By the 7 Geo. IV. c. 64, ss. 22 and 23, &c., as will be presently seen, this discouragement to the prosecution of offenders is materially removed.

Of witnesses in civil proceedings.

It seems that in *civil* proceedings a witness is not obliged to attend unless his expenses are tendered to him, pursuant to stat. 5 Eliz. c. 9; and if after such tender he neglect to appear, he may be fined according to the directions of that statute, or punished by attachment for a contempt of the court, as the circumstances of the case shall appear to be. (2 *Hawk.* c. 46, s. 173; *Ld. Raym.* 1529; 2 *Stra.* 1054, 1150).

In criminal proceedings.

But in *criminal* proceedings the demands of public justice supersede every consideration of private inconvenience, and witnesses are by the common law bound unconditionally to attend the trial upon which they may be summoned, and be bound over to give their evidence. (2 *Hawk.* c. 46, s. 173; *R.* v. *Cooke*, 1 *C. & P.* 321). To persons of opulence and public spirit this obligation cannot either be hard or injurious, but indigent witnesses grew weary of expensive attendance, and frequently bore their own charges to their great hindrance and loss; and Lord *Hale* complains of the want of power in judges to allow witnesses their charges as a great defect in this part of judicial administration. (2 *Hale*, 282: *see* "*Evidence*," *Vol. II.*)

But now, by the stat. 7 Geo. IV. c. 64, the costs of prosecutors and witnesses are allowed in most criminal cases.

By statute 7 Geo. 4, c. 64, courts may order payment of the expenses of prosecutions for felonies (*a*).

And with regard to the payment of the expenses of prosecutions for *felony*, the 7 Geo. IV. c. 64 (*a*), s. 22, enacts, "that the court before which any person shall be prosecuted or tried for any *felony* is hereby authorized and empowered, at the request of the prosecutor or any other person, who shall appear on recognizance or subpœna to prosecute or give evidence against any person accused of any felony, to order payment unto the prosecutor of the costs and expenses which such prosecutor shall incur in preferring the indictment, and also payment to the prosecutor and witnesses for the prosecution, of such sums of money as to the court shall seem reasonable and sufficient to reimburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining magistrate or magistrates and the grand jury, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein; and, although no bill of indictment be preferred, it shall still be lawful for the court, where any person shall, in the opinion of the court, *bonâ fide* have attended the court in obedience to any such recognizance or subpœna, to order payment unto such person of such sum of money as to the court shall seem reasonable and sufficient to reimburse such person for the expenses which he or she shall have *bonâ fide* incurred by reason of attending before the examining magistrate or magistrates, and by reason of such recognizance or subpœna, and also to compensate such person for trouble and loss of time; and the amount of expenses of attending before the examining magistrate or magistrates, and *the compensation for trouble and loss of time therein shall be ascertained by the certificate of such magistrate or magistrates, granted before the trial or attendance in court, if such magistrate or magistrates shall think fit to grant the same* (*b*); and that the amount of all the other expenses and

Allowance to persons attending on recognizance, where no bill is preferred.

(*a*) This act repeals the stat. 25 Geo. II. c. 36, s. 11, the stat. 27 Geo. II. c. 3, s. 3, and the stat. 18 Geo. III. c. 19, ss. 7, 8, and also the stat. 58 Geo. III. c. 70, with the exception of the 7th section, which is still in force, that section relating only to the mode of prosecuting disorderly houses, *post*, "*Disorderly House*."

(*b*) This provision that the compensation for trouble and loss of time in attending before the magistrate, and

1. *Of Prosecutor, &c.*

7 Geo. 4, c. 64. Court may order payment of the expenses of prosecutions for *misdemeanors* (a).

compensation shall be ascertained by the proper officer of the court, subject nevertheless to the regulations to be established in the manner hereinafter mentioned."

23. After reciting that "for want of power in the court to order payment of the expenses of any prosecution for a *misdemeanor*, many individuals are deterred, by the expense, from prosecuting persons guilty of misdemeanors, who thereby escape the punishment due to their offences;" it is enacted, "that where any prosecutor or other person shall appear before any court on *recognizance* or *subpœna*, to prosecute or give evidence against any person indicted of any *assault with intent to commit felony*, of *any attempt to commit felony*, of any *riot*, of any misdemeanor for *receiving any stolen property*, knowing the same to have been stolen, of any *assault upon a peace officer* in the execution of his duty, or *upon any person* acting in aid of such officer, of any *neglect or breach of duty as a peace officer*, of any *assault committed in pursuance of any conspiracy to raise the rate of wages*, of knowingly and designedly *obtaining any property by false pretences*, of wilful and indecent *exposure of the person*, of wilful and corrupt *perjury*, or of *subornation of perjury*, every such court is hereby authorized and empowered to order payment of the costs and expenses of the prosecutor and witnesses for the prosecution, together with a compensation for their trouble and loss of time, *in the same manner as courts are hereinbefore authorized and empowered to order the same in cases of felony;* and although no bill of indictment be preferred, it shall still be lawful for the court, where any person shall have *bonâ fide* attended the court, in obedience to any such recognizance, to order payment of the expenses of such person, together with a compensation for his or her trouble and loss of time, in the same manner as in cases of felony: provided, that in cases of misdemeanor, the power of ordering the payment of expenses and compensation shall not extend to the attendance before the examining magistrate."

Order of payment to be made out by clerk of assize, &c., and paid by county treasurer (b).

24. "Every order for payment to any prosecutor or other person as aforesaid, shall be forthwith made out and delivered by the proper officer of the court unto such prosecutor or other person, upon being paid for the same the sum of one shilling for the prosecutor, and sixpence for each other person, and no more; and except in the cases hereinafter provided for, shall be made upon the treasurer of the county, riding, or division in which the offence shall have been committed, or shall have been supposed to have been committed, who is hereby authorized and required, upon sight of every such order, forthwith to pay to the person named therein, or to any one duly authorized to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts."

In places not contributing to county rate (c).

25. After reciting that "felonies and such misdemeanors as are hereinbefore enumerated may be committed in liberties, franchises,

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also the expenses before him, are to be ascertained *by his certificate, granted before the time of the trial*, if he shall think fit to grant such certificate, is new.

(a) This provision is wholly new. It will be observed it is not unlike the 22nd section, relating to costs &c. in *felonies*, except that there is no power of allowing expenses or compensation for the attendance before the magistrate.

(b) This provision is a re-enactment of the 58 Geo. III. c. 70, s. 6, which, together with the 18 Geo. III. c. 19, s. 8, are repealed by the 7 Geo. IV.

(c) This provision is nearly the same as those of the 9th and 10th sections of the 58 Geo. III. c. 70, now repealed. It should seem that this provision virtually repeals the 60 Geo. III. c. 14, s. 3.

By stat. 60 Geo. III. c. 14, s. 3, "in all cases of any commitment to the county gaol, under the authority of this act, all the expenses to which the county may be put by reason of such commitment, together with all such expenses of the prosecution and witnesses as the judge shall be pleased to allow by virtue of any law now in force, shall

7 Geo. 4, c. 64.

cities, towns, and places which do not contribute to the payment of any county rate, some of which raise a rate in the nature of a county rate, and others have neither any such rate, nor any fund applicable to similar purposes; and it is just that such liberties, franchises, cities, towns, and places should be charged with all costs, expenses, and compensations ordered by virtue of this act, in respect of felonies and such misdemeanors committed therein respectively;" enacts, "that all sums directed to be paid by virtue of this act, in respect of felonies and of such misdemeanors as aforesaid, committed or supposed to have been committed in such liberties, franchises, cities, towns, and places, shall be paid out of the rate in the nature of a county rate, or out of any fund applicable to similar purposes, where there is such a rate or fund, by the treasurer or other officer having the collection or disbursement of such rate or fund; and where there is no such rate or fund in such liberties, franchises, cities, towns, or places, shall be paid out of the rate or fund for the relief of the poor of the parish, township, district, or precinct therein, where the offence was committed, or supposed to have been committed, by the overseers or other officers having the collection or disbursement of such last-mentioned rate or fund; and the order of court shall in every such case be directed to such treasurer, overseers, or other officers respectively, instead of the treasurer of the county, riding, or division, as the case may require."

Regulation of rates of allowance (*a*).

26. "For the better regulation of costs and expenses in the cases aforesaid, and for preventing abuses in respect thereof," enacts, "that it shall be lawful for justices of the peace of any county, riding, or division, or of any liberty, franchise, city, town, or place chargeable with costs

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be borne and paid by the said town, liberty, soke or place within which such offence shall have been committed, in like manner, and to be raised by the same means whereby such expenses would have been raised and paid if the offender had been prosecuted and tried within the limits of such exclusive jurisdiction; and that the judge, or court of oyer and terminer and general gaol delivery, shall have full power and authority to make such order touching such costs and expenses as such judge or court shall deem proper; and also to direct by whom and in what manner such expenses shall in the first instance be paid and borne, and in what manner the same shall be repaid and raised within the limits of such exclusive jurisdiction, in case there be no treasurer or other officer within the same, who by the custom and usage of such place ought to pay the same in the first instance."

(*a*) This provision is new. It has been observed by Mr. *Carrington* that this enactment, if followed up by the justices at the sessions fixing a scale of allowances, as proposed, might produce inconvenience, and this on two grounds:—1st, because the justices at sessions can know very little about what a criminal prosecution ought to cost, and the allowance in no two counties would be similar; and, 2nd, because nothing can vary more than the expenses of different cases; and therefore each must stand on its own peculiar circumstances. What scale of allowances could meet at all equally a case of stealing a pocket-handkerchief and an important case of burglary against several prisoners, founded on circumstantial evidence, to be deposed to by forty or fifty witnesses, and explained to the counsel in a brief of twenty sheets? Any scale of allowances fairly applicable to the one, would be absurd if applied to the other; and therefore there ought, from the nature of things, to be a discretion, vested somewhere, in allowing the expenses in each particular case; and it may be said, (no doubt very unjustly), that as the justices are all payers of the county rate, they will fix the most niggardly scale of allowances; and therefore, in all cases of real importance to the justice of the country, in all cases where a great crime has been committed, and the guilt of the parties is difficult to be traced, the prosecutor, after receiving an order for his expenses, and the thanks of the court for having done his duty to the country, will find that he has not only been robbed to a large amount, but that the allowance of expenses is so small as to leave him 30*l.* or 40*l.* out of pocket for his public spirit. (*Carr. C. L.* 114).

and expenses under the provision aforesaid, in quarter sessions assembled, to establish, and from time to time to alter, such regulations as to the rate of any costs and expenses thereafter to be allowed by virtue of this act, as to them shall seem just and reasonable; which regulations having received the approbation and signature of one justice of gaol delivery or of great sessions for the county wherein any such regulations shall have been established, shall be binding on all persons whatsoever."

Regulations to be signed by a judge.

Admiralty prosecutions.

27. "For enabling the High Court of Admiralty to order the payment of the costs and expenses of prosecutors and witnesses, and compensation for their trouble and loss of time, in cases in which other courts have a like power under this act," enacts, "that it shall be lawful for the judge of the said Court of Admiralty, in every case of felony, and in every case of misdemeanor of the denominations hereinbefore enumerated, committed upon the high seas, to order the assistant to the counsel for the affairs of the Admiralty and navy to pay such costs, expenses, and compensation to prosecutors and witnesses, in like manner as other courts may order the treasurer of the county to pay the same; and such assistant is hereby authorized and required, upon sight of every such order, forthwith to pay to the person named therein, or to any one duly authorized to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts." *See ante*, "*Admiralty*."

4 & 5 Will. 4, c. 36. Central Criminal Court.

The 4 & 5 Will. IV. c. 36, s. 12, empowers the Central Criminal Court to order the costs and expenses of prosecutors and witnesses, allowable under the 7 Geo. IV. c. 64, to be paid by the treasurer of the county in which the offence was committed.

5 & 6 Will. 4, c. 76. In corporations.

By the 5 & 6 Will. IV. c. 76, s. 113 (*ante*, "*Corporations*," p. 57), all sums directed to be paid by the above enactments of 7 Geo. IV. in respect of felonies and such misdemeanors as therein mentioned, committed in any borough in which a separate quarter sessions shall be holden, shall be paid out of the borough fund, and the order of the court shall in such case be directed to the treasurer of such borough.

Decisions and observations on the foregoing enactments.

It will be observed that these provisions of the 7 Geo. IV. do not allow the expenses of *apprehending* the prisoner, as was the case under the 58 Geo. III. but only his expenses, loss of time, &c. "in attending before the examining magistrate or magistrates, and the grand jury, and *in otherwise carrying on such prosecution*." The 28th, 29th, and 30th sections of the 7 Geo. IV. c. 64, however, in some respects supply this omission by allowing superior courts to grant rewards to parties active in apprehending offenders. *See this*, "*Rewards*," *Vol. V.*

It seems that the above enactments meant to give costs to those parties only who have previously gone before a magistrate, and that they do not apply to cases where an indictment is preferred after a magistrate has dismissed the complaint. (See *per Littledale*, J., 3 *Ad. & Ell.* 416).

And it is questionable whether under this statute a prosecutor who is not bound over to prosecute at the assizes is entitled to costs at all, (see *R.* v. *Jeyes*, 3 *Ad. & Ell.* 416, *S. C.*); but in such a case, if the witnesses be subpœnaed, the court of assize may grant their expenses under the act. (*Per* Lord *Denman*, C. J., and *Littledale*, J. *id.*)

But under sect. 22, the court may, in case of felony, allow the costs of the prosecutor and witnesses, though they are not under recognizances. (*Reg.* v. *Butterwick*, 2 *M. & Rob.* 196).

The prosecutor in a case of perjury, who has included his name in a subpœna, is entitled to his costs as prosecutor, though he is not bound over to prosecute by a magistrate, and he is not limited to his expenses incurred as a witness only. (*R.* v. *Sheering*, 7 *Carr. & P.* 440).

A party who is bound over to prosecute at a superior court by a court of quarter sessions, is entitled to his expenses under the statute. (*R.* v. *Paine*, 7 *C. & P.* 135).

An indictment for endeavouring to conceal the birth of a child is not

within the above act, and no expenses can be allowed. (*Anon.*, *Lewin, C. C.* 45).

1. *Of Prosecutor, &c.*

An indictment for an indecent assault, with intent to incite to unnatural practices, is not within sect. 23, and the prosecutor is therefore not entitled to his costs from the county. (*Reg.* v. *Johns*, 7 *Law J. Rep.* (*N. S.*) *M. C.* 92).

The enactments do not apply where the indictment has been removed into King's Bench by *certiorari*. (*R.* v. *Kelsey*, 28 *April*, 1832, *K. B.*; *R.* v. *Richards*, 8 *B. & Cres.* 420; 2 *Man. & R.* 405; *R.* v. *Treasurer of Exeter*, 6 *M. & Ry.* 167).

And where an indictment for a riot was preferred at the quarter sessions, and removed into the King's Bench by *certiorari* at the instance of the prosecutor, and the case was tried at Nisi Prius, the prosecutor was under no recognizance, and he caused himself and his witnesses to be subpœnaed, and defrayed all their and his own expenses, it was held, that neither the court of Nisi Prius nor the King's Bench could award costs under the above statute. (*R.* v. *Johnson*, 1827, *Carr. C. L.* 110; *R. & M. C. C.* 173, *S. C.*; *and see R.* v. *Richards*, 8 *B. & Cres.* 420).

But if an indictment for a misdemeanor be postponed on the motion of the defendant, he must pay the costs; but the prosecutor, unless a witness, will not be entitled to any remuneration for his loss of time or attendance. (*R.* v. *Doyle*, 1 *Esp. Rep.* 125).

In misdemeanors, not included in the 23rd section of the 7 Geo. IV. c. 64, if the defendant submits to a verdict upon a general understanding that he is not to be brought up for judgment, the prosecutor will not be entitled to costs without an express agreement respecting them. (*R.* v. *Rawson*, 2 *B. & Cres.* 592).

The prosecutor and his witnesses, being bound over, attended at the assizes and preferred the indictment which was found. The prisoner, who had been discharged by mistake, had absconded. Mr. Justice *Taunton* said, that under the authority of the word "prosecute" by the statute, he thought that he might order the expenses; but that if no bill had been preferred, he thought he should have had no authority. (*R.* v. *Robey*, 5 *C. & P.* 552).

And where the prisoner in a case of felony was at large and did not appear, the expenses of the prosecutor and witnesses, who had been bound over to appear by the coroner, were allowed. (*R.* v. *Flannings*, *Lewin, C. C.* 133).

If the trial be postponed at the instance of the prosecutor, in an indictment for felony, on account of the illness of a witness, the *prisoner* is never required to pay the costs of the prosecutor. (*R.* v. *Hunter*, 3 *C. & P.* 591).

Where the trial of such an indictment is postponed, the court will not make any order for the expenses until after the trial has actually taken place. (*Id.*)

The usual expenses of prosecution may be allowed by the proper officers of the court; but the fees attendant on the examination and the allowance to the prosecutor and his witnesses on attending before the magistrate can only be allowed on the production of the certificate mentioned in the above statute; and the court has no power to allow the expenses of witnesses attending before the coroner previous to the indictment. (*R.* v. *Rees*, 5 *C. & P.* 302; *R.* v. *Taylor*, *id.* 301).

Costs to be paid by the treasurer.

If the treasurer refuse to obey the order, an attachment or indictment may be preferred against him, but a *mandamus* will not lie. (*R.* v. *Treasurer of Surrey*, 1 *Chit. Rep.* 650). A motion was made for a rule to shew cause why a *mandamus* should not issue to the defendant to command him to pay the sum of 5*s.* to one Kinsey, pursuant to an order of the borough sessions, as an allowance for his expenses as a witness in attending a prosecution for felony carried on in that court. The application was founded on the 53 Geo. III. c. 70. But the court said that

5. *Of Constables, &c.*

18 Geo. 3, c. 19. Except where the penalty amounts to 5*l.*, or upwards.

Sect. 2. "Upon the conviction of any person or persons upon any penal statute or statutes, where the penalty or penalties shall amount to or exceed the sum of five pounds, the said costs shall be deducted by the said justice or justices, according to his or their discretion, out of the said penalty or penalties, so that the said deduction shall not exceed one-fifth part of the said penalty or penalties; and the remainder of the said penalty or penalties shall be paid to, or divided among, the person or persons who would have been entitled to the whole of the penalty or penalties in case this act had not been made."

But in several instances, even where the penalty exceeds 5*l.* the act of Parliament creating the penalty also gives costs.

Sessions to make regulations

Sect. 9. "It shall and may be lawful for his Majesty's justices of the peace, in and for any county, riding, division, city, town corporate, franchise or liberty, in quarter sessions assembled, to lay down or alter, from time to time, such rules and regulations, as to any costs or charges thereafter to be allowed to any person whatsoever by virtue of any part of this act, for the better carrying the intent of any part of this act into execution, and for the preventing any unnecessary expense, as to them shall seem most just and reasonable; which rules and regulations, having received the approbation and signature of one or more of his Majesty's judges of oyer and terminer, or general gaol delivery, at the assizes for the county wherein such rules and regulations shall have been made, shall be binding, and not otherwise, on all persons whatsoever; and no person whatsoever shall be allowed any greater sum of money, by virtue of this act, than according to the said rules and regulations so approved of as aforesaid, any thing herein contained to the contrary thereof in anywise notwithstanding."

The amount of the costs should be specified in the order or conviction, the justices having no power to order a party to pay costs to be taxed by their clerk or officer. (*Sellwood* v. *Mount*, 1 *Gale & D.* 358; *Lock* v. *Sellwood*, *ib.*, 366; *and see Reg.* v. *Long*, 1 *Gale & D.* 367).

As to the meaning of the words *heard and determined*, *see Vol. I.*, "*Appeal*," *and R.* v. *Cawston*, 4 *D. & R.* 134.

Mode of fixing costs.

As to the mode of deciding on and fixing those costs on a conviction, *see Vol. I.*, "*Conviction.*"

Costs of distresses.

As to the costs of distresses for penalties &c. *see post*, "*Distress under Magistrate's Warrant;*" distresses for rent, rates, &c. *id. and* "*Church Rates*," *Vol. I.*

IV. Of Carrying a Prisoner to Gaol.

Costs of carrying a prisoner to gaol.

As to the costs of carrying a prisoner to gaol, *see* 3 Jac. I. c. 10, *and* 27 Geo. II. st. 1, c. 3, "*Commitment for Safe Custody*," Vol. 1.

V. Of Constables, and in Other Cases.

Costs in other cases.

As to the costs and expenses of constables, *see ante*, *Vol. I.*, *tit.* "*Constables;*" on prosecution for third breach of alehouse licenses, *ante*, *Vol. I.*, *tit.* "*Alehouse.*"

As to costs on *certiorari*, *Vol. I.*, "*Certiorari.*"

On appeals, *Vol. I.*, "*Appeals.*"

On appeals against poor rates, *tit.* "*Poor Rates*," *Vol. IV.*

On appeals against orders of removal, *tit.* "*Poor*," *Vol. IV.*

On appeals against overseers' accounts, *tit.* "*Poor*," *Vol. IV.*

In distresses, *post*, "*Distress.*"

In the prosecution of vagrants, *see* "*Vagrants*," *Vol. VI.*

Costs of prosecuting a master for ill treating his parish apprentice, *see Vol. I.*, *tit.* "*Apprentices.*"

On prosecutions removed into K. B. by *certiorari, see Vol. I.*, "*Certiorari.*" *6. Forms.*

As to the costs of commitments, *see Vol. I.*, "*Commitment for Safe Custody,*" "*Commitment in Execution.*"

As to rewards, *see* "*Rewards,*" *Vol. V.*

VI. Forms.

To the Treasurer of the county of , or his deputy.

(*to wit*). } *WHEREAS by my warrant of commitment dated this day, I have committed one G. S. for* [*felony and horse stealing*] *at , in the said county, to be prosecuted at the ensuing assizes at , and have duly bound over the prosecutor and witnesses for that purpose, and the said G. S. not having sufficient goods or money to defray the charges of himself or the officer who is appointed to convey him to aforesaid, from* [*the public office, Bow Street,*] *and I having examined into and ascertained the necessary and reasonable charges and expenses to be allowed on such occasions, and appointed and fixed the sum at the sum of , do hereby, in pursuance of the act of Parliament in such case made and provided, order and require you the said treasurer of the county of , to pay to S. L. the officer appointed to convey the said prisoner as aforesaid, the said sum of , and for so doing this shall be your sufficient warrant. Given under my hand and seal at* [*the public office, Bow Street,*] *the day of , in the year of our Lord .*

J. P. (L. S.)

(1). Order of justice of peace to treasurer of county to pay expenses of carrying party committed to common gaol, on 27 Geo. 2, c. 3, s. 1.

County [or *Borough, &c*]. (*to wit.*) } *I., A. J., one of her Majesty's justices of the peace in and for the aforesaid, in pursuance of an act made in the eighteenth year of his late Majesty King George the Third, intituled "An Act for the Payment of Costs to Parties, on Complaints determined before Justices of the Peace out of Sessions, for the Payment of the Charges of Constables in certain Cases, and for the more effectual Payment of Charges to Witnesses and Prosecutors of any Larceny or other Felony," on the complaint of* [here state the names of the partics, and the offence generally, and the date,] *against for , which said complaint was heard and determined by me, on the day of , do award the following costs to be paid by , viz.* [here state the costs.] *Given under my hand and seal this day of , in the year of our Lord .*

(2). Form of awarding costs on 18 Geo. 3, c. 19 (*a*).

(*to wit.*) } *To the constable of , and to all other his Majesty's Constables in and for , in aforesaid.*

WHEREAS I, J. P. Esquire, one of her Majesty's justices of the peace in and for the aforesaid, in pursuance of an act made in the eighteenth year of his late Majesty King George the Third, intituled "An Act for the Payment of Costs to Parties, on Complaints determined before Justices of the Peace out of Sessions, for the Payment of the Charges of Constables in certain Cases, and for the more effectual Payment of Charges to Witnesses and Prosecutors of any Larceny or other Felony," have awarded on the day of now last past, on the complaint of against for the following costs to be paid by , viz. [here state the sum]: *and whereas the said being ordered by me the said justice to pay such sum as aforesaid, hath not paid down or given security for the same to the satisfaction of me the said justice; these are therefore to command you, and each and every of you, to levy the said sum of by distress and sale of the goods and chattels of the said , and I do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within days, unless the said sum of for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby also commanded to certify unto me what you shall have done by virtue of this my warrant. Given under my hand and seal at , the day of , in the year of our Lord .*

(3) Form of warrant of distress and sale for same (*a*).

(*a*) The 18 Geo. III. c. 19 gives this form.

G. *Forms.*

(4). Constable's return thereon, for want of distress (a).

(to wit.) } *I , constable of , do hereby certify to , justice of the peace of , that I have made diligent search for, but do not know, nor can find any goods and chattels of , by distress and sale whereof I may levy the sum [of], pursuant to his warrant for that purpose, dated the day of . Given under my hand, this day of , in .*

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(5). Commitment thereupon to the house of correction (a).

(to wit.) } *To the Constable of , and also to the Keeper of the House of Correction at .*

WHEREAS, in pursuance of an act made in the eighteenth year of his late Majesty King George the Third, intituled "An Act for the Payment of Costs to Parties, on Complaints determined before Justices of the Peace out of Sessions, for the Payment of the Charges of Constables in certain Cases, and for the more effectual Payment of Charges to Witnesses and Prosecutors of any Larceny or other Felony," of her Majesty's justices of the peace in and for the said , did issue warrants of distress and sale, directed to of , constable of the said of , ordering the said constable to levy the said sum of of the goods and chattels of the said , in manner and form as therein is mentioned; and whereas it appears to , by the return of , constable of , dated the day of , that he hath made diligent search, but doth not know of, nor can find any goods and chattels of the said , by distress and sale whereof the said sum of may be levied pursuant to the said warrant, these are therefore to command you, the said constable of , to apprehend the said , and convey the said to the said house of correction at , and to deliver the said there to the said keeper of the said house of correction; and these are also to command you the said keeper of the said house of correction to receive the said into the said house of correction, and there to keep to hard labour for the space of from the date hereof, or until such sum of , together with the expenses attending the commitment of the said to the said house of correction, be first paid, or until the said be discharged by due course of law. Given under hand and seal, [or "*hands and seals,*"] *at , the day of*

Cottages.

What.

COTTAGE (Sax. *Cote*), is a small house for habitation, without any land belonging to it.

31 Eliz. c 7.

By stat. 31 Eliz. c. 7, cottages were prohibited to be erected without laying at least four acres of land to the same, and divers other restrictions were thereby enjoined; but the same was repealed by stat. 15 Geo. III. c. 32, setting forth that the said statute of 31 Eliz. had laid the industrious poor under great difficulties to procure habitations, and tended very much to lessen population, and in divers other respects was inconvenient to the labouring part of the nation in general.

15 Geo 3, c. 32.

2 W. 4, c. 42.

By the 2 Will. IV. c. 42, intituled "*An Act to authorize (in Parishes inclosed under any Act of Parliament) the letting of the Poor Allotments in small Portions to industrious Cottagers,*" [1st June, 1832], reciting "whereas in parishes inclosed under acts of Parliament there are in many cases allotments made for the benefit of the poor, chiefly with a view to fuel, which are now comparatively useless and unproductive: and whereas it would tend much to the welfare and happiness of the poor if those allotments could be let at a fair rent, and in small por-

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(a) The 18 Geo. III. c. 19 gives this form.

tions, to industrious cottagers of good character, while the distribution of fuel might be augmented by appropriating the said rents to the purchase of an additional quantity;" it is therefore enacted, "that it shall and may be lawful for the trustees of the said allotments, together with the churchwardens and overseers of the poor in parish vestry assembled, and they are hereby required, to let portions of any such allotment, not less than one fourth of a statute acre, and not exceeding one such acre, to any one individual, according to their discretion, as a yearly occupation from Michaelmas to Michaelmas, (and at such rent as land of the same quality is usually let for in the said parish), to such industrious cottagers of good character, being day labourers or journeymen legally settled in the said parish, and dwelling within or near its bounds, as shall apply for the same in the manner hereinafter mentioned."

2 Will 4, c. 42.

Trustees and parish officers in vestry assembled may let portions of poor allotments to industrious cottagers.

2. "Provided also, and be it further enacted, that the person hiring the same shall be held bound to cultivate it in such a manner as shall preserve the land in a due state of fertility."

Land to be duly cultivated.

3. "For the purpose of carrying this act into effect a vestry shall be held in the first week in September in every year, of which ten days' notice shall be given in the usual manner, at which vestry the trustees of the said allotments may attend and vote, if they shall so think fit, and at which vestry, or some adjournment thereof, any industrious cottager of good character who may desire to rent such portion of land as aforesaid may apply for the same; and the said vestry are hereby required, taking into consideration the character and circumstances of the applicant, to determine the case, either by rejecting his application, or by making an order that he shall be permitted to occupy such portion of the poor allotment, being not less than one fourth of a statute acre nor exceeding one such acre, as the said vestry in their discretion shall determine, and upon the terms hereinbefore enacted; and the said order of vestry shall be held to all intents and purposes to be a sufficient title and authority to such applicant to enter into the occupation of such land at the time therein appointed."

Vestry to be held annually to receive applications.

Order of vestry to authorize occupation.

4. "Provided always, and be it further enacted, that the rent shall be reserved and payable to the churchwardens and overseers of the poor, on behalf of the vestry, in one gross sum for the whole year, and shall be paid to one or either of them at the end of the year's occupation."

Payment of rent.

5. "If the rent of such portion of land shall at any time be four weeks in arrear, or if at the end of any one year of occupation it shall be the opinion of the vestry that the land has not been duly cultivated, so as to fulfil the useful and benevolent purposes of this act, then and in such case the churchwardens and overseers of the poor, or any or either of them, with the consent of the vestry, may serve a notice to quit upon the occupier of such portion of land; whereupon the said occupier shall deliver up possession of the same to the churchwardens and overseers aforesaid, or any or either of them, within one week after the said notice has been duly served upon him."

If rent is in arrear, or land not duly cultivated, tenant may be evicted.

6. "If any person to whom such portion of land as aforesaid shall have been let for his or her own occupation, shall refuse to quit and to deliver up possession thereof when thereto required according to the terms of this act, or if any other person or persons shall unlawfully enter upon or take or hold possession of any such land, it shall be lawful for the churchwardens and overseers of the poor, or any or either of them, to exhibit a complaint against the person so in possession of such land before two of his Majesty's justices of the peace, who are hereby authorized and required to issue a summons, under their hands and seals, to the person against whom such complaint shall be made, to appear before them at a time and place appointed therein; and such justices are hereby required and empowered upon the appearance of the defendant before them, or upon proof on oath that such summons has

Power to recover possession of land illegally held over by summary process.

2 Will. 4. c. 42.

been duly served upon him, or left at his usual place of residence, or if there should have been any difficulty in finding such usual place of residence, then upon proof on oath of such difficulty, and that such summons has been affixed on the door of the parish church of the said parish in which such land is situated, and in any extra-parochial place on some public building or other conspicuous place therein, to proceed to hear and determine the matter of such complaint, and if they shall find and adjudge the same to be true, then by warrant under their hands and seals to cause possession of the land in question to be delivered to the churchwardens and overseers of the poor, or to some of them."

Arrears of rent how to be recovered.

7. "All arrears of rent for the said portions of land shall be recoverable by the churchwardens and overseers of the poor, or any of them, on behalf of the vestry, by application to two of his Majesty's justices of the peace in petty sessions assembled, who shall thereupon summon the party complained against, and after hearing what he has to allege, should they find any rent to be due, they are required to issue a warrant under their hands and seals to levy the same upon the goods and chattels of the person from whom the said rent shall be due and owing."

Application of rent.

8. "The rent of the said portions of land shall be applied by the vestry in the purchase of fuel, to be distributed in the winter season among the poor parishioners legally settled and resident in or near the said parish."

Power to exchange, for greater convenience of cottagers

9. "If any of the said allotments shall be found to lie at an inconvenient distance from the residences of the cottagers, it shall be lawful for the vestry, by an order made to that effect, to let such allotment, or any part thereof, for the best rent that can be procured for the same, and to hire in lieu thereof for the purposes of this act land of equal value more favourably situated."

No habitations to be erected.

10. "No habitations shall be erected on the portions of land demised under this act, either at the expense of the parish or by the individuals renting the same."

Extending powers and provisions of this act to 1 & 2 W. 4, c. 42, and c. 59.

11. "And whereas by two acts of the first and second years of the reign of his present Majesty, intituled 'An Act to amend an Act of the Fifty-ninth Year of his Majesty King George the Third, for the Relief and Employment of the Poor,' and the other intituled 'An Act to enable the Churchwardens and Overseers to inclose Lands belonging to the Crown, for the Benefit of poor Persons residing in the Parish in which such Crown Land is situated,' power is given, under certain restrictions, to inclose any quantity not exceeding fifty acres of waste land and crown land respectively, for the use and benefit of the poor; be it further enacted, that in any parish where such inclosure shall exist or shall hereafter take place, or where land shall in any other manner be found appropriated for the general benefit of the poor of any parish, then and in such cases the powers and provisions of this act shall be held to apply, in so far as the same may be found applicable."

See further tit. "*Poor,*" *Vol. IV.*

Counsel.

As to his right of attendance before magistrates on summary proceedings, *see* "*Conviction,*" *Vol. I.*, "*Justices,*" *Vol. III.*

As to his rights and duties at sessions, and being allowed to act as counsel for the prisoner, *see* "*Sessions,*" *Vol. V.*

As to his right of attendance before coroners, *see ante,* "*Coroner,*" p. 23.

As to what confidential communications made to counsel are privileged in evidence, *see* "*Evidence,*" *Vol. II.*

County.

[9 Geo. IV. c. 43; 10 Geo. IV. c. 46; 6 Will. IV. c. 12.]

As to the meaning of the term county, *see post*, 190.

As to what is a county, *see post*, 190.

As to the *venue*, in indictments, *see* "*Indictment*," *Vol. III.*

As to the *venue* in convictions, *see ante*, *Vol. I.*, *tit.* "*Conviction.*"

9 Geo. 4, c. 43. Division of counties.

By the 9 Geo. IV. c. 43, intituled, "*An Act for the better Regulation of Divisions in the several Counties in England and Wales*," after reciting, that "whereas by divers acts now in force it is enacted, that certain matters and things, in the same respectively mentioned, shall be transacted and determined within the divisions or limits within which the same shall arise, or the parties therein concerned inhabit or exercise their trade or calling, and by or before one, two, or more justices of the peace dwelling within or near to, or usually acting within, such divisions or limits respectively: and whereas the boundaries of such divisions or limits are in some instances uncertain, and in many have become inconvenient to the inhabitants within the same, from the change or increase of trade or population, or from other causes: and whereas doubts have arisen as to the authority by which such divisions or limits may from time to time be constituted, defined, or altered; and it is expedient that such doubts should be removed, and due provision made for the constituting, defining, and regulating from time to time such divisions or limits as the convenience of the inhabitants within the same may require;" it is enacted, "that at any time or times after the Michaelmas quarter sessions next following the passing of this act, it shall be lawful for any two or more justices of the peace for any county, riding, or division in England or Wales, having a separate commission of the peace, to transmit to the clerk of the peace a statement in writing, signed by such justices, of the parishes, tithings, townships, and places within the same, which, in the opinion of such justices, would form together a convenient and a proper division within and for which special sessions should thenceforward be held; or if any parishes, tithings, townships, or places, which, in the opinion of such justices, ought to be annexed, for the same purposes, to any other division in the said county than those or that of which at the time of making such statement they form part; and that every such statement shall, among other things, set forth within what existing divisions or division, limits or limit, the several parishes, tithings, townships, and places enumerated in the same, are situated or deemed to be; and also whether one or more and what existing divisions or limits will be altered by such proposed new divisions, or by the change of any place or places from one division to another; and also the names of such justices of the peace as at the date of such statement are usually resident or acting as such within the boundaries of such proposed new division."

Justices to forward to clerk of peace a statement of the townships, places, &c. that would form a proper division for which special sessions should be held.

Sect. 2. "At the quarter sessions next following the receipt of every such statement, setting forth such particulars as are above enumerated, and not otherwise, the clerk of the peace shall and he is hereby required to lay the same before such justices of the peace in such sessions assembled; and the justices of the peace for such county, riding, or division, having such separate commission of the peace, shall and they are hereby required (except in the cases hereinafter provided for) to proceed, at the quarter sessions next following the laying of such statement before them as aforesaid, to the consideration thereof, and at their discretion to adopt the same wholly or in part, or to reject the same altogether, or to adjourn their determination thereupon to the next or any succeeding quarter sessions."

Statement to be laid before justices at the next quarter sessions, who are to adopt or reject same.

9 Geo. 4, c. 43.

Clerk of peace to advertise statement and other particulars in the newspapers.

Sect. 3. "Immediately after the quarter sessions at which such statement shall have been first laid before the justices of the peace, the clerk of the peace shall cause to be published a copy of such statement in three successive numbers of one or more weekly newspapers usually published or circulated within the same county, riding, or division, and in which the advertisements of county business are usually inserted; and at the foot of such copy shall also cause notice to be given that such statement has been laid before such justices in pursuance of the directions of this act, and that the same will be taken into consideration by the court at the then next ensuing quarter sessions."

If justices approve, an order to be made for constituting a new division, and the clerk of peace to publish same

Sect. 4 ." When and so often as the justices of the peace of any such county, riding, or division, having a separate commission of the peace, shall adopt wholly or in part any such statement so laid before them, and shall determine to change any parish, tithing, township, or place, from one division to another, or to constitute any new division, within which special sessions shall thenceforward be holden, the said justices of the peace shall thereupon make an order for such alteration, or for the constituting and defining such new division, and in such last-mentioned order shall particularly enumerate the several parishes, tithings, townships, and places to be comprised within such new division, and shall also specify the division or divisions within which respectively any parishes, tithings, townships, and places, disannexed by such order from any former division, and not forming part of such new division, shall thenceforward be taken to be, and also shall affix to such new division the name of some principal and convenient parish, township, or place within the same, and also shall, in either of such orders, as the case may be, particularly set down the day from which such order shall take effect; and the clerk of the peace for such county, riding, or division, shall forthwith publish a copy of such order in three successive numbers of one or more such weekly newspapers as aforesaid, and shall transmit a copy of such order to every high constable within the limits of such new or altered division or divisions."

No new division to be constituted unless five justices at least shall be proved to be resident therein.

Sect. 5. "Nothing in this act shall be taken to authorize, and that it shall not be lawful for, any justices in any court of quarter session to make any order constituting such new division, unless upon due proof before them made in open court upon oath, that for two years next before the making of such proof there have been, and at the time of making the same there are, at the least, five justices of the peace residing in or usually acting within the boundary line proposed to be the limits of any such new division."

New divisions to be deemed lawful divisions for holding special or petty sessions, or other meetings of justices.

Sect. 6. "From and after the day so specified in such order, for the term of twenty-one years, and until further order of sessions after the expiration of that time, and subject to no alteration or revision during such term, except as hereinafter provided, all matters and things which by law are now or hereafter may be required to be, or which now are, usually transacted or determined within the division within which the same shall have arisen, or the parties therein concerned inhabit or exercise their trade or calling, and by or before one, two, or more justices of the peace dwelling or usually acting within the same, shall be transacted and determined, so far as the same matters and things arise within or concern the inhabitants of such new or altered division, or any of them, or the persons exercising their trade or calling therein, within the boundaries of such new or altered division; and such new or altered division shall thenceforward be, and be reputed and taken to be, for all purposes, and in the construction of all statutes now in force or hereafter to be made, and containing no special provision to the contrary, a lawful division for the holding of special sessions; and all bailiffs, constables, tithingmen, surveyors, overseers of the poor, and other officers, publicans, keepers of taverns, coffee houses, and victualling houses, and other persons, shall and they are hereby thenceforward required to give their attendance to and upon such justices of the peace at any time as-

sembled in such special sessions, within the same division, as fully and effectually as by law they had been bound to do within any division reputed or taken before the passing of this act to be a lawful and accustomed division of justices for the purposes aforesaid."

9 Geo 4, c 43.

Sect. 7. "At the quarter sessions next after the laying of any such statement before the justices in such sessions assembled, it shall and may be lawful for such justices, if they shall deem it expedient and proper, not to proceed to the single consideration of such statement, but instead thereof to cause to be made an inquiry and examination into the boundary lines, extent, and other local circumstances, of all the existing and accustomed divisions for the holding of special sessions within the commission of such justices; and at such or any succeeding quarter sessions, to which the conclusion of such inquiry and examination may from time to time be adjourned, by order of sessions, to regulate, alter, new model, and subdivide all or any of such divisions, in such manner as shall appear to them proper and convenient, particularly specifying in such order the names of all such divisions, whether newly constituted, altered, or unaltered, the several parishes, tithings, townships, and places to be comprised in each, and affixing or continuing to each the name of some principal and convenient parish, township, or place within the same."

Justices at sessions to cause inquiry into extent of divisions, and alter same, and affix names thereto.

Sect. 8. "The clerk of the peace for any county, riding, or division in which such order shall have been made as last aforesaid, shall forthwith publish a copy of the same in three successive numbers of one or more such weekly newspapers as aforesaid, and shall also forthwith transmit, by the post, a copy of the same to the churchwardens and overseers of the poor of each parish within the said county, riding, or division, to be by them affixed on the principal door of the church of such parish; and at the foot of every such copy so published or transmitted shall add a notice specifying at what time such order will be enrolled as hereinafter provided, and at what time and in what manner any person or persons, or body corporate, aggrieved by such order, may petition against the same, or any part thereof, as hereinafter provided."

Clerk of peace to publish a copy of such order.

Sect. 9. "In every such order, some time, not earlier than the fourth quarter sessions next after the making thereof, shall be provisionally specified, in which the same shall be enrolled as hereinafter provided, subject to such alteration as may thereafter be made either in the particulars of the said order, or in the time of its enrolment; and that at any court of quarter sessions preceding such time, it shall and may be lawful for any one or more person or persons, or body corporate, jointly or severally, to present a petition in writing to such court, against all or any part of such order, and to produce witnesses in support of such petition; and the justices at such court assembled shall and they are hereby required to hear and determine, in a summary way, the merits of such petition, and to amend such order so far as may upon such hearing appear proper and convenient: provided always, that no such petition shall be received or examined into, unless after due proof that a notice in writing, specifying the grounds thereof, which upon the hearing shall alone be inquired into, hath been served, ten clear days before the commencement of such sessions, upon one of the overseers of the poor, or the tithingman or constable, or two substantial housekeepers of the parish, tithing, township, or place respectively, as the case may be, wherein such petitioner or petitioners shall be resident at the time of presenting such petition, and also lodged, twenty clear days before such commencement, at the office of the clerk of the peace, who shall and he is hereby required forthwith to transmit a copy thereof to each of the justices usually acting within or for the district or places or place named in such notice."

Order to specify time when it shall be enrolled.

Parties may petition against such order.

The above eighth and ninth sections apply to orders made under the authority of section 7 only; and where an order for altering the arrangement of the parishes, townships, &c. of any county, for the con-

9 Geo. 4, c. 43.

venience of holding special sessions, has been made under sections 2 and 4, (*ante*, 186, *R.* v. *Derbyshire, Justices*, 1 *Dowl. P. C.* 386).

Order to be enrolled as soon as petitions against same have been determined, and shall not be subject to alteration for ten years.

Sect. 10. "So soon as all such petitions against such order shall have been determined, and such amendments made therein as shall have appeared necessary or proper, the justices at such quarter sessions shall cause to be inserted therein some day not earlier than one month after such sessions from which the same shall take effect, and shall cause the same order to be enrolled, and the same shall remain an order of sessions, controlling any order or orders of sessions heretofore made for the separate constitution of any new divisions, or the partial alteration of any accustomed divisions under the former provisions of this act, and not subject itself to revocation or alteration of any kind for the space of ten years thence next ensuing; and during such ten years no such statement shall be received or proceedings had thereon as above mentioned, but during all that time, and until further order of sessions after the expiration of that time, the several divisions, as limited, modelled, or constituted in and by such order, shall be and be taken to be, for all the purposes in this act mentioned, the lawful divisions for such county, riding, or division, having such separate commission of the peace, for the meetings of justices in special sessions, under any statute now in force, or hereafter to be made, and containing no special provision to the contrary; and all bailiffs, constables, tithingmen, surveyors, overseers of the poor, and other officers, publicans, keepers of taverns, coffee houses, and victualling houses, and other persons, shall and they are hereby required thenceforward, during the time last above limited, to give their attendance to and upon the justices of the peace at any time assembled in such special sessions, within the same divisions respectively, as fully and effectually as by law they have been bound to do within any division reputed and taken before the passing of this act to be a lawful and accustomed division for the meetings of justices for any of the purposes aforesaid." (See the 6 W. IV. c. 12, *post*, 189).

Clerk of peace to publish copy of enrolment.

Sect. 11. "Immediately after the enrolment of such order, the clerk of the peace shall and he is hereby required to cause to be published a copy of the same in three successive numbers of one or more such weekly newspapers as aforesaid, and shall also transmit one copy thereof to each justice of the peace dwelling within or usually acting within and for such county, riding, or division, having such separate commission of the peace."

Proceedings not to be quashed for want of form Certiorari.

Sect. 12. "No order to be made, nor any proceeding to be had or taken, in pursuance of this act, shall be quashed or vacated for want of form, or removed by *certiorari*, or any other writ or process whatever, into any of his Majesty's courts of record at Westminster; any law or statute to the contrary notwithstanding."

Not to extend to Middlesex, &c.

Sect. 13. "Nothing in this act contained shall extend, or be construed or taken to extend, to the county of Middlesex in England, or to Scotland or Ireland."

10 Geo. 4, c. 46

By the 10 Geo. IV, c. 46, intituled "*An Act for more effectually executing an Act of the last Session of Parliament, for the better Regulation of Divisions in the several Counties of England and Wales*," [19th June, 1829], reciting that "Whereas by an act passed in the last session of Parliament, intituled 'An Act for the better Regulation of Divisions in the several Counties of England and Wales,' the court of quarter sessions is empowered in certain cases to make orders for altering existing divisions, and for constituting new divisions for holding petty sessions, whereby in many cases parts of a hundred, wapentake, ward, or other district in the nature of a hundred, will be severed, for the purposes aforesaid, from the main body thereof, and such hundred or other like district will thereafter be situate in two or more divisions: and whereas by divers acts it is required of high constables to give notice to, or to serve precepts on, petty constables, churchwardens, overseers of the poor, surveyors of the highways, and others, similar duties may be cast upon

high constables by future acts, and the labour of executing such duties will be increased by the severance of the hundred or other like district under the provisions of the said recited act, and difficulties may arise in the due execution of process in such cases;" it is enacted, "that whensoever the court of quarter sessions shall, under the said provisions, make an order for changing any parish, tithing, township, or place, from one division to another, or an order for constituting any new division, and it shall appear to the court that any inconvenience will arise from such change if the high constable or high constables shall continue liable to perform the duties aforesaid in respect to the whole of his or their hundred or other like district, the same court of quarter sessions shall make an order for remedying such inconvenience, either by directing that where there are more than one high constable such duties shall be divided between them, in such manner as to the court shall seem fit, or, if circumstances shall so require, that the high constable or high constables shall be entirely exempted from the performance of a certain portion of those duties, and that the same portion shall be performed by the high constable of any other hundred, or by some petty constable, tithingman, or other peace officer, or by some other person or persons to be specified in the order: and every such order shall be binding on all justices, officers, and persons whomsoever."

Court of quarter sessions, on making order for division of any district, may at the same time make order respecting the duties of the high constables.

2. Provided always, "that neither this act, nor any order to be made by virtue thereof, shall prejudice or affect the rights of any lord of any hundred, manor, or other franchise, nor any person claiming under him, otherwise than as to the service of process in the cases hereinbefore mentioned or referred to."

Act not to affect the rights of lords of manors.

By the 6 Will. IV. c. 12, intituled "*An Act for amending an Act of the Ninth Year of the Reign of His late Majesty King George the Fourth, intituled an Act for the better Regulation of Divisions in the several Counties of England and Wales,*" [20th May, 1836,] reciting, "Whereas by an act passed in the 9th year of his late Majesty King George the Fourth, intituled 'An Act for the better Regulation of Divisions in the several Counties of England and Wales,' it is amongst other things enacted, that such divisions, when severally constituted in the manner directed by the said act, shall be subject to no alteration or revision for the several terms of twenty-one and ten years respectively, and until further order of sessions after the expiration of such terms of twenty-one years and ten years respectively: And whereas it may be expedient that such divisions should have the same limits as unions of parishes formed under the act of the fourth and fifth years of his present Majesty, intituled 'An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales;' and for this and other reasons it may be expedient to alter such divisions within shorter periods of times than are now fixed by the herein-recited act:" it is therefore enacted,

6 Will. 4, c. 12.

9 Geo. 4, c. 43.

4 & 5 Will. 4, c. 76.

1. "That it shall be lawful for the justices of the peace for any county, riding, or division, having a separate commission of the peace, in any court of quarter sessions, to alter and revise such divisions in the manner and according to the forms required by the said herein-recited act, on the expiration of three years from the constituting thereof, any thing in such act contained to the contrary notwithstanding."

Justices at quarter sessions may alter divisions after three years from the constituting thereof.

2. "It shall be lawful for the justices as aforesaid at such quarter sessions to make any order constituting any new division, upon due proof before them made in open court on oath, that at the time of making the same there are at the least five justices of the peace residing or usually acting within the boundary line proposed to be the limit of any such new division, but not otherwise."

New divisions may be constituted if five justices are resident or acting therein.

3. "All matters and things by the said herein-recited act required to be done by and with regard to the clerk of the peace shall be done by and with regard to that officer with respect to the new divisions to be formed by virtue of this act."

Forms, &c. to be similar to those in 9 Geo. 4, c. 43.

County Court.

Reservation of right of appeal.

4. Provided always, "that every such order shall be made subject to such power of petitioning against the same as is given by the said herein-recited act with respect to any order made by virtue thereof."

Proceedings not to be quashed for want of form. Certiorari.

5. "No order to be made nor any proceedings to be had or taken in pursuance of this act shall be quashed or vacated for want of form, or be removed by *certiorari*, or any other writ or process whatever, into any of his Majesty's courts of record at Westminster; any law or statute to the contrary notwithstanding."

Not to extend to Middlesex Scotland, or Ireland.

6. "Nothing in this act contained shall extend or be construed or taken to extend to the county of Middlesex in England, or Scotland or Ireland."

County Court (*a*).

[11 Hen. VII. c. 15; 2 & 3 Edw. VI. c. 25; 12 Geo. II. c. 13.]

County.

ANCIENTLY, the *comites*, *counts*, or *earls*, had the government of the counties; and afterwards the *vice-comites*, or *sheriffs*. And the *county* seemeth to be nothing else but the district of the *comes* or *count*. *Shire* is a *Saxon* word from *scryan*, to share or divide, for that the shires and counties are divided by certain metes and bounds from each other. And the *sheriff*, in Saxon *syregeresa*, is the *reve*, *grave*, or governor of the *shire;* wherein he hath great power, being therein the chief officer under the king.

County court.

The sheriff holdeth in his county two courts, the *torn* and the *county court*. The *torn* is the king's court of record for criminal causes, and for redressing of common grievances within the county; the *county court* is not a court of record, but only a court-baron, for civil causes, and this is the court of the sheriff himself.

When to be holden.

By stat. 2 & 3 Edw. VI. c. 25, no county court shall be longer deferred than one month from court to court, so that the county court shall be kept every month, and not otherwise.

And this is to be accounted twenty-eight days to the month, and not according to the month of the calendar. (2 *Inst.* 71).

Where to be kept.

It may be kept at any place within the county, unless restrained by statute. (*Wood's Inst.* b. 4, c. 1).

Who is the judge.

The suitors, that is, the freeholders, are the judges in this court. The sheriff is not a judge of the county court, and therefore a declaration on a judgment of a county court, alleging it to have been held before sheriff and suitors, is bad on special demurrer. The court should be described as the county court of the sheriff, held before the suitors. Quære, whether, in such case, it is necessary to set out in the declaration the names of the suitors? (*Jones* v. *Jones*, 5 *M. & W.* 523). By the statutes concerning parliamentary elections, the sheriff is judge at the election of knights; for he must make a true return at his peril. (*Barl. County Court. See Tinsley* v. *Nassau*, *M. & M.* 52; 2 *C. & P.* 582, *S. C.*), and he is also judge in re-disseisin by the statute of Merton.

Of what causes this court hath cognizance

This court shall hold pleas betwixt party and party, where the debt or damage is under 40*s*. (4 *Inst.* 266).

But in a *replevin*, the sum may be above 40*s*. (4 *Inst.* 266).

A. became indebted to B. in a sum not exceeding 40*s*. for the carriage of a parcel of goods; and in a month afterwards incurred another debt to B. not exceeding 40*s*. for the carriage of a second parcel. A. brought two actions in the county court for the respective debts. Held, that

(*a*) As to county courts, see Watson's Office of Sheriff, 286 to 295; Com. Dig. *County*, (C. 8); Greenwood on Courts; Read on County Courts. The county court it will be seen has not jurisdiction over criminal matters.

the causes of action were distinct, and that A. was entitled to sue separately for each demand; and the court of King's Bench refused a prohibition. (*Rex* v. *Sheriff of Herefordshire*, in a cause of *Dealy* v. *Clark*, 1 *Bar. & Ad.* 672).

A declaration in the county court stated that the defendant was summoned to answer the plaintiffs in an action of debt, without mentioning the sum demanded, and then proceeded to state that the defendant, within the jurisdiction of the court, was indebted to the plaintiffs in the sum of 1*l.* 19*s.* 6*d.* for goods then and there sold and delivered, and in the sum of 1*l.* 19*s.* 6*d.* for money found due on an account then and there stated, which said *several sums* were to be respectively paid by the defendant to the plaintiffs on request; whereby and by reason of the non-payment thereof an action hath accrued to the plaintiffs, to demand and have of and from the defendant the said *several sums* respectively, amounting to the sum of 1*l.* 19*s.* 6*d.*, yet the defendant hath not paid the said sum above demanded, or any part thereof, to the damage of the plaintiffs of 1*l.* 19*s.* 6*d.* Held, that this declaration disclosed a demand exceeding 40*s.*, (the sums in the two counts being distinct), and consequently that the county court had no jurisdiction, and that resort could not be had to the bill of particulars, (which, upon a writ of false judgment, was returned as part of the record), to shew that the demand was in reality below 40*s.* (*Dempster* v. *Purnell*, 4 *Scott, N. R.* 30). If the plaintiffs in this case intended merely to insist upon their right to recover the balance of 1*l.* 18*s.* 8*d.* as stated in the bill of particulars, they should in their declaration have acknowledged the receipt of so much as would have reduced the debt to that amount. (*Com. Dig. County*, (C. 8)).

Also it hath not cognizance of trespass *vi et armis*, because a fine is thereby due to the king, which it cannot impose. (4 *Inst.* 266).

Writ of justicies.

But by virtue of a writ of *justicies* the court may hold plea of trespass *vi et armis*, and of any sum or of all actions personal above 40*s.* For this writ is in the nature of a commission to the sheriff, for the sake of despatch, to do the same *justice* in the county court, as might otherwise be had in the courts at Westminster. (4 *Inst.* 266).

By looking into any of the treatises on the county court, it will be seen that the court is considered in the nature of a court-baron. The writ of *justicies*, giving power to this court to hold pleas above 40*s.* in some instances, does not alter the nature of this court. This is not a court *proprio vigore* holding pleas of above 40*s.*, and therefore is not within the meaning of stat. 25 Geo. III. c. 80, which gives a penalty against attornies prosecuting or defending without a certificate any suit in any court holding pleas where the debt or damage shall amount to 40*s.* or more. (*Cross* v. *Kaye*, 6 *T. R.* 663. *See Tinsley* v. *Nassau*, *M. & M.* 52.).

Cause of action must arise and defendant reside within the county.

But no action can be brought in the county court, unless the cause of action arise and the defendant reside within the county. The promise must be made, and the consideration arise, within the jurisdiction. (*Thom* v. *Chinnock*, 1 *Scott, N. R.* 138). And where that is not the case, the action may be brought in the courts above, although for a less sum than 40*s.* For if the action cannot be brought in the inferior jurisdiction, the plaintiff is not therefore to lose his debt; but he must sue in the superior courts. (*Welch* v. *Troyte*, 2 *H. Black.* 29; *Tubb* v. *Woodward*, 6 *T. R.* 175; *Haxwood* v. *Lester*, 3 *B. & P.* 617). It is not necessary that the plaintiff should reside within the county. (*Pritchard* v. *Mc Gill*, 2 *M. & W.* 380).

Plaintiff need not reside within the county.

Where a suit commenced by justicies in the county court is removed by pone to the superior court, the declaration need not state the cause of action to have arisen within the inferior jurisdiction. (*Powell* v. *Ansell*, 3 *Scott, N. R.* 444).

Matters merely in aggravation of damages are inquirable of in this court, though arising out of the county. (1 *Saund.* 74 a, n.; *Dunn* v. *Crump*, 3 *B. & B.* 309, 7 *Moore*, 137, *S. C.*)

County Court.

One plaint for one trespass or contract.

By stat. 11 Hen. VII. c. 15, no plaint shall be entered in the county court but where the plaintiff or his attorney is present, and the plaintiff shall find pledges to pursue his plaint, and he shall have but one plaint for one trespass or contract, on pain of 40*s.*, half to the king, and half to the prosecutor. And one justice may examine the sheriff, or other officer making the default, and shall within a quarter of a year certify the examination into the exchequer.

But as to the pledges above mentioned they are now disused in this court, and were formerly used only in cases where the plaintiff lived out of the county. (*Greenw.* 11; *Read's County Court*).

Who shall act as attorney in this court.

By stat. 12 Geo. II. c. 13, s. 7, if any person shall commence or defend any action, or sue out any writ, process, or summons, or carry on any proceedings in the county court, who shall not be admitted attorney or solicitor according to the act of 2 Geo. II. c. 23, he shall forfeit 20*l.* with costs to him who shall sue in any court of record.

The plaintiff in this court first takes out a summons, returnable at the next county court; and if the defendant do not appear, an attachment or *distringas* is to be made out; but if the defendant appear, the plaintiff is to file his declaration, showing his cause of action, or matter of complaint, in what manner the action accrued, at what time and place the wrong was done, and the damage he had sustained, and taking care to state therein that all the material causes of action arose within the jurisdiction. (*Greenw.* 11; *Read's County Court;* 1 *Saund.* 89, n. 1).

A custom to issue a summons, and *distringas*, or attachment, or *capias*, at the same time, seems bad. (*Williams* v. *Lord Bagot*, 3 *Bar. & Cres.* 772).

Capias

No *capias* in general lies. (*Com. Dig. County*, c. 9; *Wats.* 291).

Declaration.

If the defendant doth appear, and the next court after gives a rule to declare, and the plaintiff doth not file his declaration within the time, he may be nonsuited. (*Greenw.* 11; *Read's County Court*).

The entering of the plaint is the act of the party; and in a replevin suit in the county court if no plaint be entered the bond is forfeited. (*Exp. Boyle*, 2 *D. & R.* 13).

In the same case it was held, that where a sheriff, or his deputy, neglects to enter a plaint in the county court for damage feasant, the court of King's Bench will not compel him to do so on motion. *Id.* The plaintiff's remedy in that case would be to apply for a *mandamus* to enter the plaint, or it should seem to sue the sheriff. (*Id.*)

Continuance.

When the plaintiff hath declared, he must continue his suit from court day to court day, otherwise the defendant may take advantage of it; and this is called a continuance, being an adjourning of the suit from time to time, to keep it on foot. (*Greenw.* 11; *Read's County Court*).

Dies datus.

The rule, or *dies datus*, is when further day is given to the plaintiff to declare, or to the defendant to plead, and the time given is usually to the next court day, but upon occasion it may be enlarged. (*Id.*)

Answer

The next court after filing the declaration, and imparlance given, the defendant is to put in his answer or plea, and if the plaintiff join issue, they may proceed to trial the next court day, if they proceed not further by replication, rejoinder, surrejoinder, and the like. (*Id.*)

Plea of freehold.

But if freehold be pleaded by the defendant, this court can proceed no further, for freehold shall never be tried without writ; therefore the cause must be removed: as when a defendant avoweth for damage feasant, and the plaintiff justifieth by reason of common of pasture. (*Wood's Inst.* b. 4, c. 1).

Judgment and distress.

Where a verdict is given for the plaintiff, and judgment entered thereupon, a *fieri facias* may be awarded against the defendant's goods, which may be taken by virtue thereof and appraised and sold, to satisfy the plaintiff; but if the defendant hath no goods whereupon to levy, the plaintiff remains without remedy in this court, for it being no court of record, no *capias* lies there; but an action may be brought at common law upon the judgment entered. (*Greenw.* 22; *Read's County Court; Wats. Sheriff*, 292).

Causes are removed out of this court by a writ of *recordari*, which issues out of the Chancery, directed to the sheriff, commanding him to send the plaint that is before him in his county court (without writ of *justicies*) into the Court of Queen's Bench or Common Pleas, to the end the cause may be there determined. And the sheriff is hereupon to summon the other party to be in that court (into which the plaint is to be sent) at a day certain. And of all this he is to make certificate under his own seal, and the seals of four suitors of the same court. (*Ib.*; see *Wats. Sheriff*, 293). *County Court.* Removal by recordari.

Causes are also removed by *pone*, which differs in nothing from a *recordari*, but that it removes such suits as are before the sheriff by writ of *justicies*, and a *recordari* is to remove the suit that is by plaint only without writ. (*Ib.*; see *Wats. Sheriff*, 293). Removal by pone.

And although the plea be discontinued in the county, yet the plaintiff or defendant may remove the plaint into the Common Pleas or Queen's Bench, and it shall be good, and he shall declare upon the same. (*Greenw.* 22; *Read's County Court*). Removal after discontinuance.

In this court, after the *quinto exactus*, the coroner gives judgment of outlawry. (4 *Inst.* 266). Outlawry pronounced.

If the judgment be bad, as if the proceedings do not properly allege that the cause of action accrued within the jurisdiction, the defendant may upset the proceedings by removing them into the Queen's Bench by writ of false judgment. (See *Wats. Sheriff*, 294; 1 *T. R.* 151). False judgment.

To a writ of false judgment upon a judgment pronounced in the county court of Yorkshire, the sheriff returned, that the defendant "had not given him security to prosecute his suit," &c. The court quashed the return. (*Longden* v. *Croots*, 7 *Scott*, 377; S. C., *Anon.*, *Croots* v. *Longden*, 7 *Dowl.* 413; 5 *Bing. N. C.* 410, S. C.) The 6th section of the stat. 19 Geo. III. c. 70, applies only to causes removed from the inferior court before judgment. And semble, that its operation is confined to causes removed from inferior courts of record. (*Ib.*)

Upon a writ of false judgment from a county court, the sheriff's return of his proceedings appearing to be no more than minutes, and not full entries of the pleadings, the court at the instance of the plaintiff made absolute a rule calling on the sheriff to complete the entries, or to state what was understood by them. (*Overton* v. *Swettenham*, 3 *Bing. N. C.* 786; 4 *Scott*, 483, S. C.) But, as the plaintiff came to ask for a favour, the rule was made absolute only on payment of costs. (*Ib.*)

Out of the county court is derived the hundred court, for the ease of the subject; and it hath like jurisdiction as the county court, and may be held every three weeks. (2 *Inst.* 71). Hundred court.

No action will lie against the judge of a court for an act done by him in his judicial capacity, when acting within his jurisdiction. And, therefore, where a sheriff issues a warrant of execution in his judicial capacity, as judge in a county court, he is not liable to an action for the act of his bailiff. Consequently trespass will not lie against a sheriff where his bailiff took the goods of a wrong person, under a warrant issued by him in his judicial capacity. (*Tinsley* v. *Nassau*, *M. & M.* 52; 2 *C. & P.* 582, S. C.; *Pitcher* v. *King*, 9 *Ad. & Ell.* 288; 1 *P. & D.* 297; and see *Holroyd* v. *Breare*, 2 *B. & Ald.* 473; *Vol. I.*, "*Baron Court*"). But it seems the sheriff would be responsible where he directs the process to bailiffs specially nominated by the party who sues it out, taking an indemnity. (*Bradley* v. *Carr*, 3 *Scott, N. R.*, 523; 3 *M. & Gr.* 221, S. C.) Sheriff, when not liable for acts of bailiff.

County Hall. *See* "Shire Hall," *Vol. V.*

County Rate (a).

[12 Geo. II. c. 29; 13 Geo. II. c. 18; 55 Geo. III. c. 51; 56 Geo. III. c. 49; 57 Geo. III. c. 94; 1 & 2 Geo. IV. c. 85; 4 & 5 Will. IV. c. 48; 5 & 6 Will. IV. c. 76.]

For what purposes to be levied.

For what Purposes may be levied.—THE expenses to which counties are liable, and which are to be levied by county rates, are for the most part as follows:—

Alehouses.

The expenses of peace officers prosecuting at sessions persons charged with a third breach of their alehouse license; (9 Geo. IV. c. 61; *Vol. I.*, "*Alehouses*"); or with a breach of their beer and cider license, under 1 Will. IV. c. 64, s. 18.

Apprentices

One-half of the expenses of prosecuting masters for misusing parish apprentices. (Stat. 32 Geo. III. c. 57, s. 11; *Vol. I.*, "*Apprentices*").

Bridges.

The expenses of repairing county bridges, and highways thereto adjoining, and salaries for the surveyors of bridges. (22 Hen. VIII. c. 5; 1 Ann. st. 1, c. 18; 52 Geo. III. c. 110; and 55 Geo. III. c. 143, s. 5; *Vol. I.*, "*Bridges*"). The expenses, &c. of purchase of lands at the ends of county bridges. (*Vol. I.*, "*Bridges*").

Burial of bodies.

The expenses of burying dead bodies cast on shore in England. (48 Geo. III. c. 75, s. 6; *Vol. I.*, "*Bodies*").

Certiorari.

The expenses of the removal of any of the general county rates by *certiorari*. (12 Geo. II. c. 29).

Constable.

The allowances and expenses of county, district, and special constables. (1 & 2 Will. IV. c. 41, s. 13, and other acts; *Vol. I.*, "*Constables*").

Coroner's fees.

The coroner's fees on taking an inquisition. (25 Geo. II. c. 29; 1 Vict. c. 68; see "*Coroner*," *ante*, p. 44, and addenda to that title)

Gaols and prisoners.

The chaplain's, inspector's, or surgeon's salary in the county gaol, &c. (4 Geo. IV. c. 64; see "*Gaols*," *Vol. III.*) The expenses of setting prisoners to work. (*Ib.*) The expenses attending the preservation of the health of the prisoners. (*Ib.*) The expenses of carrying persons to the gaol or house of correction. (27 Geo. II. c. 3; 3 Jac. I.; *Vol. I.*, "*Commitment for Safe Custody*"). The allowance to discharged prisoners to enable them to return to their place of settlement. (5 Geo. IV. c. 85, ss. 22 to 25). The fees of gaoler for persons acquitted of felony or discharged by proclamation. (55 Geo. III. c. 50; 56 Geo. III. c. 116; see "*Gaols*," *Vol. III.*) The fees of clerks of assize, clerks of the peace, clerks of courts, or their deputies, upon the acquittal or discharge of prisoners. (55 Geo. III. c. 50. s. 6; 56 Geo. III. c. 116). The expenses of building, enlarging, and repairing county gaols. (4 Geo. IV. c. 64; see "*Gaols*," *Vol. III.*)

Houses of correction.

The expenses of building, repairing, and fitting up houses of correction, and employing the persons sent thither. (4 Geo. IV. c. 64; see "*Gaols*," *Vol. III.*) The salary of the keeper, &c. of gaols. (4 Geo. IV. c. 64; see "*Gaols*," *Vol. III.*)

Insolvents.

The expenses of bringing insolvent debtors before the travelling commissioner, in order to their discharge, if the prisoners are not able to pay. (1 & 2 Vict. c. 110; "*Insolvents*," *Vol. III.*)

Queen's Bench and Marshalsea prisons.

The relief of the prisoners in the Queen's Bench and Marshalsea prisons, and of poor hospitals, in the county, and of those that shall sustain losses by fire, water, the sea, or other casualties, and other cha-

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(a) An act of Parliament is in contemplation for facilitating the collection of county rates, and relieving high constables from the duty, and throwing the burthen on overseers. It will probably be passed, and if so, it will be found in the Addenda, tit. "*County Rate*," *Vol. VI.*

ritable purposes for relief of the poor, as the justices in sessions shall think fit. (42 Eliz. c. 2, s. 15; 53 Geo. III. c. 113). The King's Bench and Marshalsea prisons are now abolished; but by the 5 Vict. c. 22, ss. 8, 9, the provisions of the 55 Geo. III. c. 113, unless so far as they are altered by that act, are to apply to the Queen's prison. (*See* "*Gaols*," *Vol. III.*)

For what purposes may be levied.

The expenses of providing &c. county lunatic asylums reported necessary by visiting justices. (9 Geo. IV. c. 40; 11 Geo. IV. and 1 Will. IV. c. 1; "*Lunatics*," Vol. IV.)

Lunatics.

The expenses of prosecuting and convicting felons. (7 Geo. IV. c. 64; *ante*, "*Costs*," 175).

Prosecutions.

The expenses of repairing shire halls. (7 Geo. IV. c. 63; "*Shire Hall*," Vol. V.)

Shire halls.

The expenses of the soldiers' carriages, over and above the officer's pay for the same, by the several yearly acts against mutiny and desertion, and by the militia act, 42 Geo. III. c. 90, s. 95. ("*Military Law*," Vol. V.)

Soldiers. Militia.

The expenses of transporting felons or conveying them to the places of labour and confinement. (7 Geo. IV. c. 64; *ante*, 174; and *post*, "*Transportation*," Vol. VI.)

Transportation of felons.

The treasurer's salary. (12 Geo. II. c. 29, and 55 Geo. III. c. 51, s. 17. See "*County Treasurer*," *post*, 232).

Treasurer's salary.

The expenses of prosecuting vagrants or incorrigible rogues at the sessions, or on appeals against their convictions, and of prosecuting constables &c. for neglect of duty. (5 Geo. IV. c. 83, s. 9, 12; "*Vagrants*," Vol. VI.)

Vagrants.

The expenses of procuring and transmitting models and copies of the standard weights and measures. (5 & 6 Will. IV. c. 63, s. 22; "*Weights and Measures*," Vol. VI.)

Weights and measures.

Allowances to persons appointed to examine measures. (*Id.*)

The expenses of prosecuting and convicting persons plundering shipwrecked goods. (26 Geo. II. c. 19; "*Wrecks*," Vol. VI.)

Wreck.

If a fine be imposed on a county, which the justices at sessions think illegal, they may order the expense of litigating the question to be defrayed out of the county stock. *R.* v. *Essex*, 4 *T. R.* 591). The sessions had ordained money to be advanced by the treasurer to defend the county in a litigation respecting a fine of 500*l.* imposed on them by Lord Loughborough, at the assizes, for not repairing the county gaol, and which had been estreated into the Exchequer. On being removed by *certiorari*, it was objected that the magistrates could apply the public money to such purposes only as are specifically provided for by act of Parliament, or sanctioned by long usage. But the court held, that the order was good; for wherever a duty is imposed on a county, and where costs necessarily and incidentally arise in questioning the propriety of acts done to enforce that duty, the magistrates, who have the superintendence over the county purse, have necessarily a right to defray such expenses out of the county stock. And *Buller*, J. said, "in his opinion, the true construction of the act is, that the necessary expenses of every thing relating to the subjects therein mentioned must be borne by the county, and paid out of the county stock. If it were otherwise, the active magistrates of a county would be put in a perilous situation in a variety of cases that might happen."

Expense of litigating a question concerning a county.

But the sessions cannot order the costs of a prosecution for a misdemeanor, though carried on under the order and direction of a magistrate, to be defrayed out of the county rate. (*R.* v. *W. R. of Yorkshire*, 7 *T. R.* 377; *ante*, "*Costs*," p. 173; "*Certiorari*," *Vol. I.*)

Prosecution by order of magistrate.

The justices have no right, except by following the provisions of particular acts of Parliament, to anticipate the county rates, and so as to make the expense of public county works ultimately fall on different persons from those who are by law liable at the time it is incurred. An order of sessions, therefore, for levying and paying to the treasurer of

Rate to reimburse for antecedent expenses incurred for county purposes not allowed.

For what purposes may be levied.

the county a sum to enable him to reimburse certain persons for an antecedent debt, although such debt had been incurred for county purposes, is bad; and justices have no right to anticipate the county rates. (*R.* v. *Justices of Flintshire*, 5 *B. & Ald.* 761; 1 *D. & R.* 470, S. C.) *Parke* had obtained a rule *nisi* in Michaelmas Term, 1824, for a *certiorari* to remove an order of sessions of the county of Flint, dated 12th July, 1824, for levying and paying into the hands of the treasurer of that county 200*l.* 5*s.*, to enable him to pay that sum, in part payment of the claim of Messrs. Sankey. It appeared that, by a former order of sessions, the treasurer had been empowered to borrow from Messrs. Sankey, who were bankers, the sum of 1000*l.* for carrying on the public works within the county, to be repaid by instalments. This money had been advanced, from time to time, in 1817 and 1818, and repaid in account, but further advances being made, the balance remaining due to the bank was 447*l.*, in part payment of which this order was made. The affidavits on the other side stated, that the whole money had been, in fact, laid out for county purposes. The court made the rule absolute; observing, "that this was a rate to reimburse persons for a debt previously contracted, which was clearly bad, inasmuch as *the justices had no right* (except by following the provisions of particular acts of Parliament, which had not been done here) *to anticipate the county rates, and so to make the expense ultimately fall on different persons from those who were by law liable at the time it was incurred.*" Writ of *certiorari* granted. (And see as to church rates, *Vol. I.* "*Church Rates.*"

And where such treasurer, being authorized by an order of sessions to raise money on the credit of the county rates, obtained advances from time to time from his bankers, and died in their debt; the sessions being satisfied that the money so advanced had been *bonâ fide* applied to county purposes, made an order for assessing and levying a sum of money towards the repayment of the debt; the court held such order to have been improperly made, and quashed it. (*R.* v. *Justices of Flintshire*, 2 *D. & R.* 843.)

By an act for building a gaol, the justices of sessions were authorized to assess a *special* county rate upon every parish in the county, for the payment of the expenses of building such gaol, and that rate was made payable out of the monies collected in the parishes for the relief of the poor; and there was a proviso, that every tenant might deduct out of his rent one-half the amount of the rate: it was held, that commissioners under a local act for paving and lighting the town and managing the poor, could not make a *retrospective* rate in order to *reimburse* themselves in one year money which they had paid in a former year on account of such special county rate for building the gaol. (*Cortis* v. *Kent Water Works Company*, 7 *B. & Cress.* 314).

12 Geo. 2, c. 29. Sessions may lay a general rate instead of several rates.

Statutes as to.]—Formerly all county rates were assessed and collected by separate rates, which was not only extremely troublesome and inconvenient, but so expensive that the charge of collecting and assessing frequently exceeded the sum rated; for remedying this, by statute 12 Geo. II. c. 29, intituled, "*An Act for the more easy Assessing, Collecting, and Levying of County Rates,*" where by section 1, after reciting that "whereas by an act passed in the twenty-second year of the reign of King Henry the Eighth, for repairing and amending bridges and highways; and whereas by another act passed in the first year of the reign of her late Majesty Queen Anne, to explain and alter the said act, it is, for the more easy taxing and collecting the money for the repair of such bridges and highways thereunto adjoining, (amongst other things), enacted, 'that the justices of the peace within the several limits of their commissions shall, at their general or quarter sessions of the peace, have full power and authority, upon due presentment to them made that any bridge within their respective commissions or autho-

rities is out of repair, and which by them hath usually or ought to have been repaired and maintained, to make assessments upon every town, parish, or place within their respective commissions for that purpose, in proportions upon each respective town and parish, as they usually have been assessed towards the repair of bridges, which assessments are to be levied and collected in the manner prescribed by the said act;' and whereas by an act passed in the eleventh and twelfth years of the reign of his late Majesty King William the Third, to enable justices of the peace to build and repair gaols in their respective counties, it is (amongst other things) enacted, 'that it shall and may be lawful for the justices of the peace, or the greater number of them, within the limits of their commissions, upon presentment of the grand jury or grand juries at the assize, great sessions, and general gaol delivery held for the same county, of the insufficiency or inconveniency of their gaol or prison, to conclude and agree upon such sum or sums of money as upon examination of able and sufficient workmen shall be thought necessary for the building, finishing, and repairing a public gaol or gaols belonging to the shire or county whereof they are justices of the peace; and by warrant under their hands and seals, or under the hands and seals of the greater number of them, by equal proportions, to distribute and charge the sum or sums of money to be levied for the uses aforesaid upon the several hundreds, lathes, wapentakes, rape, ward, or other division of the said county, in the manner prescribed by the said act;' which said act was revived and continued by an act passed in the tenth year of the reign of her late Majesty Queen Anne, for seven years, and to the end of the then next session of Parliament, and made perpetual by an act of the sixth year of the reign of his late Majesty King George the First; and whereas by an act passed in the seventh year of the reign of King James the First, for the due execution of divers laws and statutes heretofore made against rogues, vagabonds, and sturdy beggars, and other lewd and idle persons, it is (amongst other things) enacted, 'that there shall be erected, built, or otherwise provided, within every county of this realm of England and Wales, where there is not one house of correction already built, provided, or continued, one or more fit and convenient house or houses of correction, by the justices of the peace, or the more part of them, at their respective quarter sessions; and that the master or governors of the said houses of correction shall have such sums of money yearly as shall be thought meet by the said justices, the same to be paid quarterly beforehand by the treasurers appointed by an act made in the three-and-fortieth year of the late Queen Elizabeth, intituled 'An Act for the Relief of the Poor;' which said act was to continue for seven years, and till the end of the next session of Parliament; and was further continued by an act passed in the third year of the reign of King Charles the First, intituled 'An Act for the Continuance and Repeal of divers Statutes,' unto the end of the first session of the next Parliament; and, by an act passed in the sixteenth year of the same reign, continued in force until repealed by some other act of Parliament;' and whereas by an act passed in the forty-third year of the reign of Queen Elizabeth, intituled 'An Act for the Relief of the Poor,' it is (amongst other things) enacted, 'that the justices of the peace of every county or place corporate, or the more part of them, in their general sessions to be holden next after the feast of Easter, and so yearly, as often as they shall think meet, shall rate every parish to such a weekly sum of money as they shall think convenient, so as no parish be rated above the sum of sixpence nor under the sum of a halfpenny weekly to be paid, and so as the total sum of each taxation of the parishes in every county amount not to above the rate of twopence for every parish within the said county;' and it is thereby likewise enacted, 'that the justices of the peace, at their general quarter sessions to be holden at the time of such taxation, shall set down what competent sums of money shall be sent quarterly out of every county or place corporate for the relief of the poor prisoners of the King's Bench

12 Geo. 2, c. 29.

12 Geo 2, c. 29.

and Marshalsea, and also of such hospitals and almshouses as shall be in the said county, and what sums of money shall be sent to every one of the said hospitals and almshouses, so as there be sent out of every county yearly twenty shillings at the least to each of the said prisons of the King's Bench and Marshalsea; which sums are rateably to be assessed upon every parish, and to be levied and collected as in and by the said act is directed;' and whereas by an act passed in the fourteenth year of the reign of Queen Elizabeth, intituled 'An Act how Vagabonds shall be punished and the Poor relieved,' it is enacted, 'that the justices of the peace of every county, or the more part of them, in their general quarter sessions, shall rate every parish at such reasonable sums of money for the relief of prisoners as they shall think convenient, so as no parish be rated above sixpence or eightpence weekly; and the churchwardens of every parish shall levy the same every Sunday, and once in every quarter pay the said sums to the high constables or other head officers; and the said high constables and head officers shall pay the money received of the said churchwardens to such persons as shall be appointed by the said justices in sessions, to be by them distributed weekly for the relief of prisoners;' so much of which said act as relates to the taxing, levying, receiving, and employing of gaol money was revived and continued to the end of the then next session of Parliament by an act passed in the first year of the reign of King James the First, intituled 'An Act for continuing and reviving of divers Statutes, and for repealing of some others;' and was further continued by an act passed in the twenty-first year of the reign of the said King James, intituled 'An Act for continuing and reviving of divers Statutes, and repeal of divers others;' and was further continued to the end of the next session of Parliament by an act passed in the third year of the reign of King Charles the First, intituled 'An Act for the Repeal and Continuance of divers Statutes;' and by an act passed in the sixteenth year of the same reign was continued in force until repealed by some other act of Parliament; and whereas by an act passed in the nineteenth year of the reign of King Charles the Second, intituled 'An Act for Relief of poor Prisoners, and setting them on Work,' it is (among other things) enacted, 'that the justices of the peace at their general sessions, or the major part of them, if they think fit, may provide a stock of materials for setting poor prisoners on work, in such manner and by such ways as other county charges are levied and raised, and provide and pay fit persons to oversee such work, and make such orders concerning the premises as they from time to time shall think fit, provided that no parish be rated above sixpence by the week towards the premises;' and whereas an act passed in the twelfth year of the reign of her late Majesty Queen Anne, for reducing the laws relating to rogues, sturdy beggars, and vagrants into one act of Parliament, and for the more effectual punishing such rogues, vagabonds, sturdy beggars, and vagrants, and sending them whither they ought to be sent, it is (amongst other things) enacted, 'that the justices of the peace at their quarter sessions may from time to time, when need shall be, by such ways and means as monies for county gaols or bridges may be raised, cause such sums of money to be raised within their respective precincts and jurisdictions, for the passing and conveying or maintaining of rogues and vagabonds, as shall be necessary for those purposes; which said several rates, when collected, are to be paid, by virtue of the said several acts, into the hands of treasurers or receivers to be appointed by the justices at their respective general or quarter sessions of the peace, and to be accounted for, as in and by the said several acts are recited;' and whereas it is apparent that the manner and methods prescribed by the said several respective acts for collecting some of the said rates are impracticable, the sums charged on each parish in the respective divisions being so small that they do not by an equal pound rate amount to more than a fractional part of a farthing in the pound on the several persons thereby rateable; and if possible to have been rated, the expense of assessing

and collecting the same would have amounted to more than the sum rated;' and whereas many and great doubts, difficulties, and inconveniences have arisen in making and collecting other of the said rates, therefore that the good ends and purposes of the said several statutes may be answered, and the several sums of money thereby intended to be raised may effectually be collected with as much ease and certainty and as little expense as can be to the parties obliged by the said laws to pay the same, it is enacted, 'that from and after the 1st day of September, 1739, the justices of the peace in that part of Great Britain called England, within the respective limits of their commissions, at their general or quarter sessions, or the greater part of them then and there assembled, shall have full power and authority from time to time to make one general rate or assessment for such sum or sums of money as they in their discretions shall think sufficient to answer all and every the ends and purposes of the before-recited acts, instead and in lieu of the several separate and distinct rates directed thereby to be made, levied, and collected; which rate shall be assessed upon every town, parish, or place within the respective limits of their commissions, in such proportions as any of the rates heretofore made in pursuance of the said several acts have been usually assessed; and the several and respective sums so assessed upon each and every town, parish, or place within the respective limits of their commissions, shall be collected by the high constables of the respective hundreds and divisions in which any town, parish, or place doth lie, in such manner and at such times as is hereinafter directed.'"

12 Geo. 2, c. 29.

After 1st Sept. 1739, justices to make from time to time one general assessment, instead of the several rates appointed by several acts.

This act was not passed to impose any new rates, but to facilitate the assessing, collecting, and levying of those that were previously imposed; and for that purpose, instead of the several rates for the several purposes for which rates under former acts were imposed, there was to be one general rate to answer all ends and purposes of former acts. There was no intention to vary the obligation to pay, or the right to receive; the persons before liable to pay were still liable to pay, and the persons entitled to receive were still to be the persons so entitled. (4 *M. & Sel.* 437).

Which rate shall be assessed in such proportions in every parish or place, as any of the rates by the said several former acts have been usually assessed.]—But now by the 55 Geo. III. c. 51, s. 1, (*post*, 209), this is to be understood a fair and equal proportionable rate upon every division, though indeed before the passing of this latter act, notwithstanding changes of circumstances and inequalities, the sessions had no power to vary the proportions in which the county rate had *usually* been *assessed* on the several parishes. (See *R.* v. *St. Paul's, Covent Garden, Cald.* 158).

By sect. 2. "That the respective sum or sums so to be assessed and collected may be well and truly paid to the respective high constables, be it further enacted, that the churchwardens and overseers of the poor for the time being of each and every parish and place within the respective counties, cities, and liberties in which they respectively lie, shall and they are hereby required, out of the money collected or to be collected for the relief of the poor of such parish or place, to pay to the high constables of the respective hundreds or divisions of the said counties, cities and liberties, the respective sum or sums of money so rated and assessed upon such parish or place, within the space of thirty days after demand thereof made in writing, to be given to the said churchwardens or overseers of the poor, or any of them, or left at their or either of their dwelling-house or houses, or affixed on any of the church doors of such parish or place to which such officer shall belong, by the said high constable or high constables of the respective hundreds or divisions; which demand the respective high constable or high constables is and are hereby required to make, at such times as the said justices of the peace, or the greater part of them, shall by their order in sessions direct; and the receipt or receipts of such high constable or

To be paid out of the poor's rate of every parish to the high constable;

12 Geo. 2, c. 29.

high constables shall be a full and sufficient discharge to such churchwardens and overseers of the poor, or other person paying the same, and shall be allowed in their accounts as such by the justices of the peace before whom such accounts shall be passed; and in case such churchwardens and overseers of the poor, or any of them, shall neglect or refuse to pay any the sum or sums of money hereby assessed, after demand made as aforesaid, such high constable or high constables shall and they are hereby empowered to levy the same by distress and sale of the goods and chattels of such churchwardens and overseers, or either of them, so refusing or neglecting to pay the same as aforesaid, by warrant under the hands and seals of two or more justices of the peace of the county, riding, division, city, town corporate, liberty, or place, residing in or near such parish or place, rendering the overplus, if any there shall be, after deducting the money assessed and the charges of the distress and sale, to the owner or owners thereof."

or to be levied on them by distress

Proportion of Rate.]—*R.* v. *Justices of Yorkshire*, 12 *East*, 117. In this case there were two questions directed to be tried:—1. Whether the said two townships of Hartishead and Clifton, in the West Riding, did or did not before and since stat. 12 Geo. II. c. 29, form *one* constablery, known by the name of H. *cum* C., for the purpose of raising such rates? 2. Whether H. and C. were or were not before and since that statute two separate townships, for the purpose of raising such rates? And it was admitted that before the statute these two townships usually contributed between themselves in a certain proportion to the county rate imposed upon the two separately. The jury found that there was an union of the two townships in one joint constablery. And upon this a motion was made for a *mandamus* to the defendants, to make at the next quarter sessions an order upon the constablery of H. *cum* C. to levy a sum by an *equal rate*, for the proportion of the said constablery towards the county rates. And this application was granted by the court. And *per* Lord *Ellenborough*, C. J. "By stat. 12 Geo. II. c. 29, s. 1, the proportions of the general rate as between the several towns, parishes and places which had before been separately assessed, were to be preserved; but the money was to be raised upon each by one aggregate rate, instead of by the several distinct rates before leviable under different acts of Parliament for distinct purposes. Now H. and C., though acting as two townships for some purposes, yet for the purpose of county rates, and *quoad* the act of the 12 Geo. II., they constituted but one place. The sect. 2 must be understood of parishes and places in which one general poor's rate is collected, and cannot therefore apply to a case like the present, where there is no such general fund raised upon the entire district which is assessed to the county rate. The case, therefore, must come within the provision of the 3d section (*infra*), that where there is no poor's rate, that is, no poor's rate co-extensive with the district assessed, the county rate shall be levied by the petty constable, 'in the same manner as the money for the relief of the poor is by law to be rated or levied,' that is, by *equal* taxation of the inhabitants &c. of the place rated. The rate, therefore, must be levied equally on the whole of this artificial place or district, being that on which the county rates had, before the act, been usually assessed as if it had been one parish." *Grose*, J. and *Le Blanc*, J., agreed, as did *Bayley*, J., who said, "that by *proportions*, the legislature only referred to the proportions between the several districts before assessed to the county rates, with reference to the county at large."

Where there is no poor's rate, the perty constable of the place to levy the county rate.

By sect. 3. Provided nevertheless, "that in case no rate is or shall be made for the relief of the poor in any parish, township, or place, the justices of the peace in their respective general or quarter sessions, or the greater part of them then and there assembled, shall and may by their order direct the sum of money assessed on such parish, township, or place for the purposes of this act to be rated and levied on any such parish, township, or place by any petty constables or other peace officer of or belonging to the same, in such manner as money for the relief of

the poor is by law to be rated or levied; which sum so rated and levied shall be paid by such petty constable or other peace officer to the respective high constable for the hundred, division, or liberty wherein such parish, township, or place shall lie; and shall be demanded of, paid by, or levied on such petty constable or other peace officer in the same manner as any rates are hereinbefore directed to be demanded of, paid by, and levied on the churchwardens and overseers of the poor, or any of them; and if such petty constable or other peace officer shall pay such sum, before the same shall be so by him rated and levied as aforesaid, he may afterwards rate and levy the same, or shall and may be allowed and reimbursed the said sum of money out of any constable's or other rate made or to be made on any such parish, township, or place, which the said justices of the peace or the greater part of them in their sessions shall order and direct." And see further the stat. 55 Geo. III. c. 51, s. 8, *post*, 214, and 56 Geo. III. c. 49, *post*, 222.

12 Geo. 2, c. 29.

As money for the relief of the poor is to be rated or levied.]—That is to say, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes, coal mines, or saleable underwoods. Stat. 43 Eliz. c. 2, s. 1.

Counties excepted from paying the rate of this act out of the poor's rate.

Sect. 4. "And whereas it will be very inconvenient to many towns, parishes, and places in the several counties of York, Derby, Durham, Lancaster, Chester, Westmoreland, Cumberland, and Northumberland, that the rates by this act directed to be paid by and levied on the churchwardens and overseers of the poor for the purposes aforesaid should be paid out of any rate to be made for the relief of the poor in such towns, parishes, and places; be it therefore enacted, that it shall and may be lawful to and for the justices of the peace for the respective ridings, divisions, or counties of York, Derby, Durham, Lancaster, Chester, Westmoreland, Cumberland, and Northumberland, at their respective general or quarter sessions, or the greater part of them then and there assembled, if they shall think convenient, to order the sum of money directed to be assessed on any such town, parish, or place, for all or any of the purposes of this act, to be paid by and levied on the petty constable of or for any such town, parish, or place within the said counties respectively, in such manner as the same is herein directed to be paid and levied in cases where no rate is made for the relief of the poor; any thing herein contained, or any law, usage, or custom to the contrary notwithstanding."

If they shall think convenient.]—By which words the justices in those counties may order the rate to be paid by either of the two methods before mentioned, according to their discretions; that is to say, either by the churchwardens and overseers out of the poor rate, or by the petty constable by an assessment after the manner of the poor rate.

Proviso in favour of places heretofore not paying all or any county rates.

Sect. 5. Provided always, "That this act, or any thing herein contained, shall not extend or be construed to extend to make any persons, liberties, divisions, or places liable to pay to any rate to be made in pursuance of this act, to which such person, liberty, division, or place did not or was not liable to contribute before the passing hereof; but that it shall and may be lawful to and for the justices of the peace at their respective general or quarter sessions, or the greater part of them then and there assembled, to order and ascertain what proportion of any rate to be made by virtue of this act shall be assessed on and paid by the several persons, liberties, divisions and places, who have usually contributed or are liable to pay only to one or more of and not to all the rates hereby intended to be raised and thrown into one general rate or assessment."

As for instance, where by stat. 22 Hen. VIII. c. 5, towns corporate are charged for the repairing of bridges within their respective liberties, and the counties for the bridges out of such liberties; in such a case, a town corporate ought not to be charged towards the bridges in the county at large; and consequently ought to have an abatement in the

12 Geo. 2, c. 29.

rate charged upon them, in such proportion as the expense of bridges is to the whole expense of the several articles charged upon the said general county rate: as if the expense of bridges be a tenth part of the whole expense, chargeable upon the county rate, then such town corporate shall have an abatement of one shilling for every ten, which it would otherwise be charged with in such rate.

13 Geo. 2, c. 18.

And by stat. 13 Geo. II. c. 18, s. 7, after reciting the 12 Geo. II. c. 29, and the above sect. 5, and that "doubts have arisen whether the said act doth extend to liberties and franchises, which are not within the jurisdiction of the commissions of the peace for the counties in which such liberties and franchises lie, and so never did nor were liable to contribute to the said county rates," it is enacted, "That where any liberties or franchises within that part of Great Britain called England, have commissions of the peace within themselves, and are not subject to the jurisdiction of the commissions of the peace for the counties in which such liberties or franchises lie, and do not, nor did before the making the said in part recited act, contribute or pay to the several rates made for the said counties; it shall and may be lawful to and for the justices of the peace of such liberties and franchises, within the respective limits of their commissions, to have, use, and exercise all and singular the powers, authorities, and methods given or prescribed by the said in part recited act, and all such liberties and franchises are hereby declared to be subject thereto, in the same manner to all intents and purposes as counties at large are; any thing in the said in part recited act contained, or any law, usage, or custom to the contrary thereof, in any wise notwithstanding."

55 Geo. 3, c. 51, s. 24.

And by stat. 55 Geo. III. c. 51, s. 24, (*post*, 221), where any ridings or divisions have separate commissions of the peace, or where any cities, towns, or other places have commissions of the peace within themselves, and are not subject to the jurisdiction of the commissions for the counties at large within which they lie, nor did before contribute to the general county rate, it shall and may be lawful for the justices of such separate jurisdictions to have, use, and exercise all the powers, &c. given by that act.

5 & 6 Will. 4, c. 76. Corporations.

And by the 5 & 6 Will. IV. c. 76, s. 92, (*ante*, 95), if in any borough the borough fund shall be insufficient, the council may order a rate in the nature of a county rate to be made within the borough, and for that purpose shall have all the powers which justices in any county have by virtue of the 56 Geo. III. c. 51.

A county rate may be levied for a town erected into a county of itself, although no such rate has been ever levied before. The quarter sessions for the town and county of the town of Nottingham appointed a high constable for the ensuing year for the special purpose of collecting and raising from the overseers &c. of each parish within the town the rates &c. in the nature of a county rate. They appointed a treasurer to receive the said collection, subject to the order of the session. The application of the sum collected was directed to the relief of prisoners in prison, the repairs of the house of correction, keeper's salary, soldiers' carriages, transporting felons, and such other charges to which the same was by law applicable within the said town. The town of Nottingham was formerly part of the county; Henry VI. made it a county of itself, and confirmed the charters of its corporation, which it had by prescription. Two questions arose, viz. whether the justices had power to levy any such rate; and secondly, whether the present rate was good. *Per curiam:* "By the common law, as also by the statute of Winchester, officers of this nature are incident to districts, having separate jurisdiction: and in many cases a *mandamus* will lie to appoint officers for the first time where the exigency of circumstances require it. While the expenses were here very small, the corporation might submit to pay them without a rate; but having become heavier, that previous payment does not preclude them from making this rate, or discharge other

persons from liability." (*James* v. *Green*, 12 *East's Rep.* 117, decided before the 55 Geo. 3, c. 51). 55 Geo. 3, c. 51.

The case of *Weatherhead* v. *Drewry and Others* (11 *East*, 168; *ante*, *Vol. I.* tit. "*Constable*") establishes that where a district has an exclusive jurisdiction of the peace it is liable to a rate in the nature of a county rate, and that the words "liberties and franchises having commissions of the peace within themselves," contained in stat. 13 Geo. II. c. 18, include "charter justices;" and that by consequence a borough having such justices may make a rate in the nature of a county rate. Charter justices.

A rate in the nature of a county rate may be levied in Berwick-upon-Tweed under the 55 Geo. III. c. 51, s. 24, that being a place not subject to the commission of the peace of any county in England, and never having contributed to a rate made for any county, although it does not lie within the body of any English county, and although no rate had ever been levied there before; the corporation having defrayed, out of their own funds, the charges to which the sums raised by a county rate are applicable. (*Rex* v. *Berwick-upon-Tweed*, 8 *B. & Cres.* 327; 2 *M. & R.* 378, *S. C.*;) and the following is part of Lord *Tenterden's* judgment in that case; "I cannot entertain a doubt that it was the intention of the legislature, in the statutes 13 Geo. II. c. 18, s. 7, and 55 Geo. III. c. 51, s. 24, to include every place that had a jurisdiction of its own, and did not contribute to the county rate, and was not subject to the commission of the peace for any county. We ought to put such a construction on the words of the act as will best satisfy that intention. If the words used in their ordinary import are a little too narrow, we ought, in furtherance of the intention of the legislature, to extend them to meet a particular case. Berwick has a separate jurisdiction; it is not subject to the commission of the peace of any county, and does not, nor did, before the passing of the statute 55 Geo. III. c. 51, s. 24, contribute or pay to the rate made for any county. The words are, 'did not pay or contribute to the rates made for the said counties at large.' I think we must understand the words 'said counties at large' to mean any county at large. Berwick-upon-Tweed does not indeed lie within any English county, but that is immaterial. Any town or place which has a separate jurisdiction, and is not subject to the commission of the peace of any county, and does not contribute to the rate made for any county, is within the act, although it may not be within the body of an English county. As to the other point, it is established by *Weatherhead* v. *Drewry*, and *James* v. *Green*, that if the justices of Berwick had jurisdiction to make the rate, this court will not inquire into the necessity or propriety of making it. The rule for a *certiorari* must, therefore, be discharged."

Where a borough town was incorporated by charter, and certain members of the corporation were made justices (but without power to try felonies), and the charter contained a general non-intromittant clause, wholly preventing the interference of the county justices within the town:—Held, that a rate, in the nature of a county rate, might be imposed by the justices of the town, under the authority given by the 55 Geo. III. c. 51, s. 24. (*Mercer* v. *Davis*, 10 *Barn. & Cres.* 617). The following is part of *Bayley*, J.'s judgment in that case:—"The case of *Weatherhead* v. *Drewry* (11 *East*, 169) establishes the position, that where a district has an exclusive jurisdiction of the peace, it is liable to a rate in the nature of a county rate. That, therefore, is an authority to show that the Maidstone charter having a general non-intromittant clause as to the county justices, the borough justices have power to make a rate in the nature of a county rate. The county justices are altogether excluded, and cannot in any wise interfere in any single act in their character of justices of the peace. We have been pressed with the decision in *Rex* v. *Clarke*, and if that were applicable to this case, we should have to decide another question, viz. whether the borough of Maidstone can raise its own rate for some purposes, and be liable to the

55 Geo. 3, c. 51.

general county rate for others. But the case of *Rex* v. *Clarke* is very different; for there the city justices had jurisdiction as to some matters only, and the county justices retained their power and jurisdiction as to others; and the only point *decided* there was, that the city ought to contribute to the county rate. Here the county justices have no jurisdiction, and the borough justices are not county justices for any purposes. They can only commit to their own gaol, and have no power to commit to the county gaol, as in the Liverpool case (*Rex* v. *Houghton*, 5 *M. & Sel.* 300). Then, according to *Rex* v. *Miers*, the expenses of prosecutions at the assizes for felonies committed in Maidstone are not to be paid out of the general county rate. For these reasons, I am of opinion that the rate in question was properly made, and that our judgment must be for the defendant."

In *Bates* v. *Winstanley* (4 *M. & Sel.* 429) it was decided that a charter giving jurisdiction to borough justices over a district *not within* the borough, without words of exclusive jurisdiction, does not exclude the county justices from rating the district to a county rate.

The proviso in the 55 Geo. III. c. 51, s. 1, (*post*, 209), stating that that act shall not give any jurisdiction to the justices of the county over any places situate within the limits of any liberties or franchises having a separate jurisdiction, is confined to franchises having a separate jurisdiction co-extensive with that possessed by the county justices; and, therefore, where the justices of the city of B. had no jurisdiction by charter to try felons, it was held that the city of B. was liable to the county rate. (*R.* v. *Clarke*, 5 *B. & Ald.* 665; 1 *D. & R.* 316, *S. C.*; more fully noticed, *post*, 210; *and see R.* v. *Shepherd*, 4 *Nev. & M.* 185; 2 *Ad. & Ell.* 298, *post*, 211, 212).

12 Geo. 2, c. 29. High constables to pay the monies to the treasurers appointed by the quarter sessions, and they to whomsoever the justices shall direct.

By 12 Geo. II. c. 29, s. 6, "The respective high constables shall and they are hereby required, at or before the next general or quarter sessions respectively after they or any of them shall have received such sum or sums of money, to pay the same into the hands of such person or persons (being resident in any such county, riding, division, city, liberty, or place where such rates shall be respectively made) whom the said justices shall at their respective general or quarter sessions, or the greater part of them then and there assembled, appoint to be the treasurer or treasurers (which treasurer or treasurers they are hereby authorized and empowered to nominate and appoint), such treasurer or treasurers first giving sufficient security in such sums as shall be approved of by the said justices at their respective general or quarter sessions, or the greater part of them then and there assembled, to be accountable for the several and respective sums of money which shall be respectively paid to them in pursuance of this act; and to pay such sum or sums of money as shall be ordered to be paid by the justices in their general or quarter sessions, and for the due and faithful execution of the trusts reposed in him or them; and all and every such sum or sums of money as shall be paid into his or their hands by virtue of and in pursuance of this act shall be deemed and taken to be the public stock; and the said treasurer or treasurers shall and are hereby required to pay so much of the money in their hands to such person and persons as the said justices at their respective general or quarter sessions, or the greater part of them then and there assembled, shall by their orders from time to time direct and appoint, for the uses and purposes of the said recited acts, and for any other uses and purposes to which the public stock of any county, city, riding, division, or liberty is or shall be applicable by law."

Treasurers to keep books of entries, and to account upon oath.

7. "The said respective treasurer or treasurers shall and are hereby required to keep books of entries of the several sums respectively received and paid by him or them in pursuance of this act; and is and are also hereby required to deliver in true and exact accounts upon oath if required (which oath the said justices at their respective general or quarter sessions are hereby empowered to administer) of all and every

the sum and sums of money respectively received and paid by him or them, distinguishing the particular uses to which such sum or sums of money have been applied, to the justices at every general or quarter sessions respectively to be holden within the limits of their commissions; and shall lay before the justices at such sessions the proper vouchers for the same." 12 Geo 2, c. 29.

8. "The respective high constables shall and they are hereby required to demand and levy such rates and assessments in manner before directed, and shall account for the same before the said justices at their respective general or quarter sessions, if thereunto required, in the like manner as the said treasurer or treasurers is and are hereby directed to account; and in case such high constables, or any of them, shall neglect or refuse so to demand, levy, or account, then it shall and may be lawful to and for the said justices, at their respective general or quarter sessions, or the greater part of them then and there assembled, to commit such high constable or high constables to the common gaol of the county, riding, division, city, town corporate, liberty, or place, there to remain without bail or mainprize until he or they shall have caused such rates or assessments to be demanded and levied, and shall have rendered a true account or accounts in the manner hereby directed; and in case it shall appear by such account or accounts that any sum or sums of money is or are remaining in his or their hands, which he or they shall have received of the respective churchwardens and overseers, or other persons, which ought to have been paid to the respective treasurer or treasurers, at the time or times limited by this act, or of the respective treasurer or treasurers, in order to be applied to the purposes aforesaid; and if he or they shall neglect or refuse to pay the same over into the hands of the respective treasurer or treasurers, or otherwise, if thereunto required by order of the said justices at their respective general or quarter sessions, or the greater part of them then and there assembled, then it shall and may be lawful for the said justices, at such their general or quarter sessions, or the greater part of them then and there assembled, to commit such high constable or high constables to the common gaol of the county, riding, division, city, town corporate, liberty, or place, there to remain without bail or mainprize until he or they shall have made full payment of the sum or sums of money that shall appear to be due on such account or accounts; and all the accounts and vouchers of the said treasurers and high constables shall, after having been passed by the said justices at their respective general or quarter sessions, be deposited with the clerk of the peace for the time being of each county respectively, or the town clerk, high bailiff, or chief officer of any city, town corporate, or liberty, who is and are hereby required to keep them among the records of such county, city, town corporate, or liberty, to be inspected from time to time by any of the said justices (a) within the limits of their commissions, as occasion shall require, without fee or reward." High constable's charge. Penalty on default. Their and the treasurer's vouchers to be kept among the records of the county, &c.

9. "The receipts of such respective treasurer or treasurers shall be sufficient discharges to all high constables; and the discharges of the said justices of the peace, or the greater part of them, by their orders made at their respective general or quarter sessions to such treasurer or treasurers, shall be deemed and allowed as good and sufficient releases, acquittances, or discharges in any court of law or equity to all intents and purposes whatsoever." What shall be their respective discharge.

10. "No new rate shall be made until it shall appear to the said jus-

(a) The rate-payers of a county have, neither at common law nor by statute, any right to inspect and copy the bills of charges of county officers, when they are deposited with the clerk of the peace among the county records, in pursuance of the 12 Geo. 2, c. 29, s. 8. The right of inspection is confined to the justices of the peace for the county. (*Rex* v. *Staffordshire* (*Justices*), 1 *Nev. & Per.* 260; 6 *Ad. & Ell.* 84).

12 Geo. 2, c. 29

The condition on which new rates are to be made.

tices at their respective general or quarter sessions, or the greater part of them then and there assembled, by the accounts of their respective treasurer or treasurers, or otherwise, that three fourths of the money collected by virtue of the preceding rate have been expended for the uses and purposes aforesaid."

Treasurer to be continued or removed at the will of the quarter sessions.

11. "It shall and may be lawful to and for the said justices of the peace at their respective general or quarter sessions, or the greater part of them then and there assembled, to continue from time to time such treasurer or treasurers in his or their office or offices so long as they shall see convenient, and to remove him or them at their pleasure, and appoint any other person or persons in his or their place; and to allow to him or them and every of them, insisting on the same, such reasonable sum or sums of money for his or their care and pains in the execution of such trust, not exceeding twenty pounds by the year, as they in their discretions shall think fit; which they are hereby empowered to direct the payment of out of the monies arising by the respective rates hereby appointed to be made."

Parishes overrated to appeal to the said sessions.

12. "In case the churchwardens and overseers of any parish or place shall at any time have reason to believe the said parish or place is overrated, such churchwardens and overseers may appeal to the respective justices of the peace at their next general or quarter sessions against such part of the rate only as may affect the parishes or places in which they serve such offices; which justices, or the greater part of them then and there assembled, are hereby authorized and empowered to hear and finally determine the same: Provided nevertheless, that upon such appeal such rate shall not be quashed or destroyed in regard to any other parishes or places assessed thereby." (See 55 Geo. III. c. 51, s. 14, *post*, 217).

No repairs of bridges &c. but upon presentments of the grand jury.

13. "No part of the money to be raised and collected in pursuance of this act shall be applied to the repair of any bridges, gaols, prisons, or houses of correction, until presentments be made by the respective grand juries at the assize, great sessions, general gaol delivery, or general or quarter sessions of the peace held for any county, riding, division, city, town corporate, or liberty, of the insufficiency, inconveniency, or want of reparation of their bridges, gaols, prisons, or houses of correction."

Justices to contract with persons for public repairs upon public notice.

14. "From and after the first day of June one thousand seven hundred and thirty-nine, when any public bridges, ramparts, banks or cops, or other works, are to be repaired at the expense of any county, city, riding, hundred, division, liberty, or town corporate, it shall and may be lawful to and for the justices of the peace at their general or quarter sessions respectively, or the greater part of them then and there assembled, if they think proper and convenient, after presentment to be made as aforesaid of the want of reparation of such bridges, ramparts, banks, or cops, to contract and agree with any person or persons for rebuilding, repairing, and amending of such bridges, ramparts, banks or cops as shall be within their respective counties, cities, ridings, hundreds, divisions, liberties, or towns corporate, and all other works which are to be repaired and done by assessment on the respective counties, cities, ridings, hundreds, divisions, liberties, or towns corporate, for any term or terms of years, not exceeding seven years, at a certain annual sum, payment, or allowance for the same; such contractor or contractors giving sufficient security for the due performance thereof to the respective clerk of the peace for the time being, or the town clerk, high bailiff, or chief officer of any city, town corporate, or liberty; and that such justices at their respective general or quarter sessions shall give public notice of their intention of contracting with any person or persons for rebuilding, repairing, and amending the bridges, ramparts, banks or cops, and other works aforesaid; and that such contracts shall be made at the most reasonable price or prices which shall be proposed by such contractors respectively; and that all contracts when agreed to, and to all orders relating thereto, shall be entered in a book to be

kept by the respective clerk of the peace for the time being, or the town clerk, high bailiff, or chief officer of any city, town corporate, or liberty for that purpose, who is and are hereby required to keep them amongst the records of such county, city, town corporate, or liberty, to be from time to time inspected at all seasonable times by any of the said justices within the limits of their commissions, and by any person or persons employed or to be employed by any parish, township, or place contributing to the purposes of this act without fee or reward."

12 Geo 2, c. 29.

15. "There shall be but one rate made and assessed by the justices of the peace of the county of Middlesex, in the said county, city, and liberty of Westminster, for the several purposes aforesaid, and for the repair of the gaol commonly called New Prison, in the said county of Middlesex."

Justices to make but one rate for Middlesex.

16. "Provided nevertheless, that the justices of the peace for the city and liberty of Westminster, at their general or quarter sessions to be holden for the same city or liberty, or the greater part of them then and there assembled, shall have full power to appoint the governor or master of the house of correction within the said city or liberty, who shall have such sum of money yearly as hath been accustomed for and towards the support and maintenance of the prisoners in his custody who shall be sick or unable to work (not exceeding the present allowance of fifty pounds by the year), and direct the repairs and management thereof as they heretofore have done; and the treasurer or treasurers of the money arising by the rates in the said county of Middlesex and city and liberty of Westminster, hereby appointed to be collected, shall and is and are hereby required to obey all orders which shall from time to time be made by the said justices of the said city and liberty, or the greater part of them then and there assembled at their general or quarter sessions, for the payment of any sum or sums of money for the allowance allotted to such governor or master of the house of correction, and the repairs thereof, which orders shall be good and sufficient discharges to such treasurer or treasurers; any thing herein contained to the contrary thereof in anywise notwithstanding."

Exception as to the house of correction at Westminster.

17. "The justices of the peace at their respective general or quarter sessions, or the greater part of them then and there assembled, shall be and are hereby empowered to oblige, by their order or orders, the respective high constables and petty constables, or any other person or persons who are or have been empowered to levy, collect, or receive any sum or sums of money by virtue of and for the purposes aforesaid, and who have any sum or sums of money in their hands, to account with them at their general or quarter sessions, in such manner as high constables are directed to account by virtue of this act; and in case such high constable or petty constables, or other person or persons, shall refuse to account or to pay over the money that shall remain in their or any of their hands, when thereunto required by order of the said justices, or the greater part of them, in their respective general or quarter sessions assembled, in either of the said cases the said justices shall have the like remedy against them, or any of them, as they have against the high constables by virtue of this act, for not accounting for or paying over the money remaining in their hands; and it shall and may be lawful to and for the said justices, at their respective general or quarter sessions, or the greater part of them then and there assembled, and they are hereby empowered to direct and order the payment of the respective sums of money which shall appear to be remaining due, and not applied or disposed of, into the hands of the respective treasurer or treasurers to be appointed by this act, which shall be deemed to be part of the stock of the said counties, cities, ridings, divisions, liberties, or places respectively, and to inquire what sums of money are due and owing for the purposes aforesaid, and then to order the payment of such sums as shall appear to them upon such inquiry to be justly due and owing."

Justices empowered to oblige collectors to account with them,

and to order the money unapplied to be paid to the treasurer

12 Geo. 2, c. 29.

No action against persons collecting on rates discharged by *certiorari*, &c. (a):

18. "No action or suit shall be commenced or prosecuted against any person or persons who has or have been or shall be employed in the collecting or receiving any money, in pursuance of the said recited acts or this present act, on any rate or rates which has or have been or shall be quashed or discharged on any *certiorari* brought or to be brought in any of his Majesty's courts of record at Westminster, or otherwise, for any money collected or received, or to be collected or received on any such rate or rates before such writ of *certiorari* was or shall be brought and allowed; and that justice may be done to such persons who shall or may pay towards any rate which shall be quashed or discharged, the several sums of money which shall appear to have been paid by them on such rate, either in whole or in part, more than they ought to have paid, shall be repaid or allowed to them in the next rate or rates which shall be made in pursuance of this act, as if the same had been paid on such new rate or rates; any thing in any former act, or any law, usage, or custom to the contrary thereof in anywise notwithstanding."

but the persons overrated to be relieved.

Such collectors obliged to make payment.

19. Provided always, that "all and every such person and persons so employed or to be employed shall account for and pay over the money by them respectively received, in the same manner, and under the like penalties for any neglect or refusal therein, as are to be inflicted by virtue of this act on any person or persons neglecting or refusing to account for or pay over any money remaining in his or their hands, which he or they have received in pursuance hereof; any thing in any of the said recited acts contained to the contrary thereof in anywise notwithstanding."

Justices of Middlesex to have the same powers at their general as at their quarter sessions.

20. "The justices of the peace for the said county of Middlesex, at their general sessions of the peace to be holden for the said county, shall have the same powers and authorities to put this act in execution as are hereby given them at their general quarter sessions; any thing in this or any former act, or any law, usage, or custom to the contrary notwithstanding."

Writ of *certiorari* on what terms issuable.

21. "No writ of *certiorari* to remove any rates made in pursuance of this act, or to remove any orders or other proceedings taken or made by the said respective general or quarter sessions touching such rates, shall be taken out or granted, but upon a motion to be made some time in the first week of the next term after the time for appealing from such rates or orders is expired, and upon making it appear to the court, by affidavit or otherwise, that the merits of the question upon such appeal or orders will, by such removal, come properly in the judgment of the said court; and that no such writ of *certiorari* shall be allowed until sufficient security be given to the respective treasurer or treasurers appointed by virtue of this act, in the sum of one hundred pounds, to prosecute such writ of *certiorari* with effect, and to pay the costs to be ascertained by the court to which such rates, orders, or proceedings shall be removed, in case such rates or orders shall be confirmed; nor shall any such rates, orders, or proceedings be quashed or vacated for

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(a) The sessions, on an appeal under a local act against a county rate, confirmed the same subject to an opinion of this court on a special case which was brought up on a certiorari, but not the rate. The court made the rule absolute for quashing the order of sessions, but the justices at the next sessions refused to quash the rate, stating that the appeal was no longer before them. A rule nisi for a mandamus to the sessions to enter continuances and quash the rate, was discharged after argument, no substantial mischief being shewn to have arisen to the appellants from the rate, and the result of the sessions quashing it being to expose the collectors and receivers to actions, since the 12 Geo. 3, c. 29, s. 18, only protects the collectors where the rate is quashed upon a certiorari.

Held also, that the court could not order the justices to quash the rate. (*Reg.* v. *St. George's, Hanover Square*, 8 *Law J. Rep.* (*N. S.*), *M. C.* 18).

want of form only; and all charges attending such removal shall be defrayed out of that or any subsequent rate."

12 Geo. 2, c. 29.

22. "So much of the before recited act passed in the fourteenth year of the reign of Queen Elizabeth, as relates to the method of taxing parishes for the relief of prisoners; and so much of the said act of the forty-third year of the same reign, as relates to the method of raising money for the King's Bench and Marshalsea prisons, hospital, and almshouses; and so much of the said act of the nineteenth year of the reign of King Charles II. as relates to the method of rating parishes for providing materials for the setting poor prisoners on work; shall be repealed and be absolutely null and void."

Part of the acts, 14 & 43 Eliz. and 19 Car. 2, repealed.

23. "Provided nevertheless, that such sums as have been annually paid to the King's Bench and Marshalsea prisons shall be paid out of the monies arising by virtue of this act, at such times and in such manner as is prescribed in and by an act passed in the eleventh year of the reign of his present Majesty, intituled 'An Act for the more effectual securing the Payments of certain Sums of Money directed by an Act made in the Forty-third Year of the Reign of Queen Elizabeth, intituled 'An Act for the Relief of the Poor,' to be paid by the respective Treasurers of every County of England and Wales, for the Relief of the Poor Prisoners of the King's Bench and Marshalsea prisons;' and such money as shall be judged necessary by the justices of the peace in sessions to be applied, in pursuance of the said recited act of the fourteenth year of the reign of Queen Elizabeth, for the relief of prisoners, and of the said act of the nineteenth year of the reign of King Charles II., for providing materials for the setting poor prisoners on work, shall be paid out of the monies arising by this act." (See now 5 Vict. c. 22, ss. 8 & 9).

Manner of the payment of the King's Bench and Marshalsea money.

24. "If any action or suit shall be commenced against any person or persons for any thing that shall be done in pursuance or by the authority of this present act, in every such case the action or suit shall be commenced within three months next after the fact committed, and not afterwards, and shall be laid and brought in the respective county in which the cause of action or suit shall arise, and not elsewhere; and the defendant or defendants in such action or suit to be brought shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this act; and if it shall appear so to be done, or that such action or actions shall be brought after the time before limited for bringing the same as aforesaid, or shall be brought in any other county or place, that then the jury shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall be nonsuited, or discontinue his, her, or their actions or suit, after the defendant or defendants hath or have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have in other cases by law." (See 55 Geo. III. c. 51, s. 23, *post*, 221).

Limitation of actions.

General issue.

Treble costs (*a*).

Great inequalities and disproportions in the assessments to county rates were produced by length of time and the improper mode of assessments, which the writs of law had not power to remedy; wherefore the 55 Geo. III. c. 51, intituled "*An Act to amend an Act of his late Majesty King George the Second for the more easy assessing, collecting and levying of County Rates,*" was passed, and whereby after reciting, "that the laws now in force are found ineffectual for the correction of the disproportions which now exist, or which may from time to time take place in the assessment of county rates," it is enacted, "that from and after the passing of this act, it shall be lawful for the justices of the peace of the several counties of that part of Great Britain called Eng-

55 Geo. 3, c. 51. Justices in sessions to make a fair and equal county rate, when circumstances require.

(*a*) See *post*, 221, n. (*b*).

55 Geo. 3, c. 51.

land, assembled at their general or quarter sessions, or at any adjournment or adjournments thereof, and they are hereby authorized and empowered whenever circumstances shall appear to require it, to order and direct a fair and equal county rate to be made for all the purposes to which the county stock or rate is now or shall hereafter be made liable by law (*a*), according to the directions hereinafter mentioned; and for that purpose to assess and tax every parish, township and other place, whether parochial or extra-parochial, within the respective limits of their commissions, rateably and equally according to a certain pound rate (to be from time to time fixed and publicly declared by such justices), of the full and fair annual value of the messuages, lands, tenements and hereditaments, rateable to the relief of the poor therein; any law or statute to the contrary thereof notwithstanding: provided also, that nothing in this act contained shall extend or be construed to extend to give any jurisdiction to the justices of the peace of the said several counties over any places situate within the limits of any liberties or franchises having a separate jurisdiction, which before the passing of this act were subject to rates in the nature of county rates imposed and assessed by the justices of the peace for such liberties and franchises, or which were exempt from the rates of the county in which they lie, either in the whole or in part; nor to alter any proportion of county rate payable by any liberty or franchise having a separate jurisdiction as established between the county and the said liberty or franchise, provided such exemption or proportion shall have been created by or derived from grant, charter, or any special local act of Parliament; nor to compel any such liberty or franchise paying to some one or more of the rates specified in the preamble of an act passed in the twelfth year of the reign of his late Majesty King George the Second, intituled, 'An Act for the more easy assessing, collecting and levying County Rates,' to pay to any other rate therein mentioned, to which such liberty or franchise was not liable to contribute before the passing of the said act; nor to repeal or alter the provisions of any acts now in force which shall have fixed the times and places of holding any general or annual general sessions or adjournment thereof, for the assessing the rates of any county, or for the raising, levying or collecting the same, but that such provisions so fixing the time or place of holding such general or annual general sessions or adjournment thereof, and of then and there exclusively transacting the matters therein mentioned respecting the county rates, shall be and remain in full force; and that all the matters and things which in and by this act are authorized to be done by the justices of the peace at their general or quarter sessions or at any adjournment or adjournments thereof, shall be done and performed exclusively at such general or annual general sessions or at some adjournment thereof, and at no other time or place than such as shall have been fixed by any such act."

A pound rate.

Not to alter proportion of franchise having separate jurisdiction.

12 Geo. 2, c 20.

Nor to alter times of holding any general quarter sessions for assessing county rates.

The proviso in this first section of the 55 Geo III. extends only to places which have a jurisdiction separate from and co-extensive with the jurisdiction of the county justices; and, therefore, where the justices of the city of B. had no jurisdiction to try felons, it was held, that the city of B. was liable to the county rate. (*R.* v. *Clarke*, 1 *D.* & *R.* 316; 5 *B.* & *Ald.* 665, S. C.) The following is the judgment of *Abbott*, C. J. in that case:—" I am of opinion, that the city of Bath is liable to contribute to the county rate, and that in this case our judgment should be for the Crown. The question depends on the construction to be put upon the 55 Geo. III. c. 51, s. 1, by which a power is given to the justices of the county to tax every parish, township and other place, whether parochial or extra-parochial, within the respective limits of their commissions. The first question, therefore, which arises is,

(*a*) See *ante*, 194, 195, as to the purposes for which the rate may be made.

55 Geo. 3, c. 51.

whether the city of Bath be within the limits of the jurisdiction of the justices of the county of Somerset. Now it appears from the statement of the case, that they alone have the power of trying felonies committed within the city. It is, therefore, clear, that Bath is within the limits of their jurisdiction. Then comes the proviso, which states, that the act shall not give any jurisdiction to the justices of the county over any places situate within the limits of any liberties or franchises having a separate jurisdiction. Then is the city of Bath a franchise 'having a separate jurisdiction?' I think that these words must mean 'having a separate jurisdiction co-extensive with that possessed by the county justices.' Here it is clear, that the justices of Bath have no such jurisdiction: for their jurisdiction is by the charter of Elizabeth confined to such trespasses, offences, defects and articles, which do or may belong to the office of a justice of the peace. It is clear from these words, that it does not extend to felony, and, therefore, is not co-extensive with that of the county justices. Then, if so, the case does not fall within that part of the proviso; but the proviso goes further, and speaks of places which before the act were 'subject to rates in the nature of county rates, or which were exempt from the rates of the county, either in the whole or in part, under some grant, charter, or local act of Parliament.' Now it is clear from the case, that the city of Bath, previously to the 55 Geo. III. was not subject to any rate in the nature of a county rate, nor do I find it stated, that it was legally exempted by any grant, charter, or local act of Parliament. Upon the whole, therefore, I am of opinion, that the city of Bath does not fall within the proviso. Nor does the 24th section, as it seems to me, carry the case any further, for that clause only applies to such franchises as have commissions of the peace within themselves, and are not subject to the jurisdiction of the commission of the peace for the counties in which they lie. Here the city of Bath was, in my opinion, subject to that jurisdiction, and our judgment, therefore, must be for the Crown."

By the charters of the borough of Marlborough the burgesses were exempt from suit of shires and hundreds, and all pleas and plaints, except pleas of the Crown, from duel, and from being impleaded out of the borough in pleas concerning tenements in the borough, and from all secular exactions. The borough had also fairs and markets, and a prison for custody of persons till delivered by law, and power to send to the county gaol prisoners apprehended for treason, murder, felony, or suspicion of felony. There was also a power to make bye-laws for the government of the inhabitants, and to have courts leet and courts of piepoudre: there were borough justices, who were prohibited from determining felony without special mandate from the Crown; the mayor was coroner, escheator, and clerk of the market; and there was a non-intromittant clause as to other justices, escheators, coroners, or clerks of the market. In practice the county magistrates exercised no jurisdiction within the borough, their warrants being backed by the borough magistrates. There were borough quarter sessions, at which misdemeanors were tried, but not felonies. There was a borough gaol, supported by the borough, in which prisoners were sometimes placed previous to examination. Prisoners to be tried at the borough quarter sessions, or remaining in custody for any time, were confined in a county bridewell within the borough, at the expense of the borough. Prisoners charged with felonies committed within the borough were tried at the county assizes, and previously confined in the said county bridewell; or where the offences were heavy, in the county gaol without the borough, in which case the borough paid the expense of conveying them to the county gaol; but the county paid the expenses of conveying them from the county bridewell to the assizes, and maintained them in the county gaol without the borough. The borough paid the expenses of passing vagrants, and of inquests, the mayor acting as coroner. The borough repaired a bridge within the borough. The

55 Geo 3, c. 51.

above borough expenses were defrayed by a borough rate, first levied in 1775. No county rate had been levied in it. Held, that M. was a place of a separate jurisdiction, derived from charter, and one which before stat. 55 Geo. III. c. 51 was subject to rates, in the nature of county rates, imposed by its own justices, and therefore, by the proviso in sect. 1, was exempt from county rates. (*Rex* v. *Shepherd*, 2 *Adol. & Ell.* 298; 4 *Nev. & M.* 185).

Where a district situate within the local limits of the county of York had ever been deemed as part of the county of Durham, but had always contributed to the public burthens of the former county, it was held, that it was to be presumed that such district, either in the original division of land into counties, or at some subsequent period when it was separated from the county of York, made part of the county of Durham on condition of its contributing to the burthens of the county of York, in which it was locally situate, and that such district was liable to the rate imposed on that county. (*Johnson* v. *Dealtry*, 3 *B. & Ald.* 72; *see R.* v. *West Riding, Yorkshire*, 12 *East*, 117, *ante*, 200; *R.* v. *Austen*, *D. & R. C. N. P.* 24).

Under sect. 1, a borough cannot claim exemption from county rate as situate within a franchise "having a separate jurisdiction," on the ground that such borough has by charter justices of the peace, coroners, a court of record for civil causes, and a prison of its own; the justices not having power to hold sessions to try felonies, and the charter containing no *non-intromittant* clause; and the county justices having, in fact, often committed prisoners to the county gaol for offences done within the borough, and the maintenance of such prisoners, and the expenses of such prosecutions, (except in one instance), having been borne by the county. (*Rex* v. *Hayward*, 6 *Ad. & El.* 590). The court will not presume an exemption of such borough from county rate by immemorial prescription, or a lost grant, on the ground that the borough has never yet paid county rate, and has always maintained its own bridges and gaol, and borne the expenses of inquisitions held by its coroners. *Ib.*

Some boroughs not to be liable to county rates

By the 5 & 6 Will. IV. c. 76, s. 112, after a grant of a separate court of quarter sessions shall have been made to any borough, the justices of the county in which such borough is situate shall not assess any property therein to any county rate thereafter to be made. But by the 113 sect. such boroughs shall bear the expenses of prosecutions at the assizes. (*See ante*, "*Corporations*," p. 111).

Justices to require churchwardens and overseers to make returns of annual value of rateable property.

55 Geo. III. c. 51, s. 2, "For the better enabling the said justices to make such fair and equal county rates," enacts, "That it shall be lawful for them at any general or general quarter sessions of the peace, or at any adjournment or adjournments thereof, (to be holden after the passing of this act), and as often as they shall deem it expedient, and they are hereby authorized and empowered to issue precepts signed by their chairman, or by the clerk of the peace, under the authority of the said court, to the high constables, petty constables, churchwardens, overseers of the poor, assessors and collectors of public rates and taxes of or for the several and respective parishes, townships, and places, whether parochial or otherwise, within their jurisdiction, or to such and so many of them as to the said justices shall seem expedient, requiring the said constables, churchwardens and overseers of the poor, assessors and collectors respectively, to make returns in writing to the justices of their respective divisions in petty sessions assembled (which returns shall be verified on oath at the time of delivery, before any two or more such justices) of the total amount of the full and fair annual value of the several estates and rateable property within the parish, township, or place, whether parochial or otherwise, to which they respectively belong, charged or assessed to the poor's rate at the time of making such return, or liable so to be, or charged or assessed on any other rate or assessment, whether parochial or public, without regard

nevertheless to the actual amounts or sums assessed on the property therein, save and except in such parishes, townships, or places only, where such property is assessed to the full and fair estimated annual productive value."

55 Geo. 3, c. 51.

Justices acting for divisions empowered to receive returns.

Sect. 3. "It shall be lawful for the said justices so assembled at their general or quarter sessions as aforesaid, and they are hereby authorized and empowered from time to time, whenever they shall deem it expedient for the purposes of this act, also to make an order or orders for the justices of the peace within the limits of their commissions to meet from time to time within the several divisions in and for which they respectively act, and to fix therein the time of such first meeting; and the said justices in their respective divisions shall have power to adjourn from time to time until the purposes of this act shall be completed; and any two or more such justices assembled at any such meeting shall receive the returns of the said constables, churchwardens, overseers, assessors, and collectors, causing the same to be verified as before directed, and them and every or any of them to examine on oath touching any matters and things contained in such returns as in the judgment of the said justices may appear necessary for the purposes of this act, and to report their proceedings to the said justices assembled at the next or any subsequent general or quarter sessions as they shall have ordered and directed."

May examine overseers &c. on oath.

To report proceedings to sessions.

Churchwardens and overseers not making returns.

Sect. 4. "In case any constable, churchwarden, overseer, assessor, or collector aforesaid, shall neglect or make default in making any such return in manner aforesaid, to the precepts which shall be issued by or under the authority of the said justices, then and in every such case each and every such constable, churchwarden, overseer, assessor, or collector so neglecting and making default (without sufficient excuse, to be allowed by the said justices in their said general or quarter sessions), shall forfeit and pay such sum and sums of money not exceeding 20*l.* as shall or may be ordered or adjudged by such justices so assembled as aforesaid, to be levied on the goods and chattels of each and every churchwarden and overseer of the poor so neglecting or making default."

Penalty for, not exceeding 20*l.*

Justices in petty sessions assembled, empowered to issue their precepts to officers, requiring them to make returns in writing.

Sect. 5. "In case of default by not making due return of any matter or thing required by the precept of the justices in general or general quarter sessions assembled as before directed, it shall be lawful for the justices in their respective divisions in petty sessions assembled, or any two or more of them, to issue their precepts to any officer or officers before described, who shall have made such default, to make their returns in writing as before required to them, on a day and at a place therein to be named, and so from time to time as often as shall be necessary; and in case any officer before described shall neglect or make default in making any such return to the precepts which shall be issued by any two or more justices acting for the division wherein such default shall be made, then and in every such case each and every such officer before described so neglecting and making default as aforesaid, without sufficient excuse, to be allowed by the said justices acting for such division, shall forfeit and pay any sum not exceeding 20*l.* as shall or may be ordered and adjudged by such last-mentioned justices, to be levied on the goods and chattels of the officers so neglecting or making default."

Parishes may be assessed although no return made.

Sect. 6. "If any churchwarden or churchwardens, overseer or overseers, assessor or assessors, or collector or collectors, shall neglect or make default in making such return or returns as aforesaid, or if it shall happen that notwithstanding the incurring of any such penalty or penalties as aforesaid, for or on account of such neglect or default, a return for any parish, township, or place, whether parochial or otherwise, shall not be made within the time limited for the making thereof, then and in every such case it shall be lawful for the said justices, and they are hereby required, either at the said general or quarter sessions, or at any adjournment or adjournments thereof, or at some subsequent

55 Geo. 3, c. 51.

general or quarter sessions to be held for the same county, or at some adjournment or adjournments thereof, or at some petty sessions, or adjournment or adjournments thereof respectively, as the case may be, to ascertain the annual value of the property chargeable to the county rate, within or for each and every the parish, township, and place, whether parochial or otherwise, of which the constable or constables, churchwarden or churchwardens, overseer or overseers, assessor or assessors, collector or collectors, shall have so neglected or made default in making such return as aforesaid, by issuing fresh precepts, or by such other means as may appear to the said justices the most convenient and proper towards the obtaining a just and fair estimate of such annual value; and the said justices of the peace of the county in general or quarter sessions, or any adjournment or adjournments thereof, assembled, acting on their own discretion, or on the report of any two or more justices acting in and for any division of such county, as the case may be, shall order such allowance or compensation to be made to the persons employed in ascertaining the said annual value and in making such returns as aforesaid, as to the said justices so assembled shall appear reasonable; and all such allowances and compensations, and other expenses as shall be thereby incurred, shall be by the said justices so assembled charged upon the parish, township, or place, whether parochial or otherwise, of which the churchwarden or churchwardens, overseer or overseers of the poor, shall have so neglected or made default as aforesaid, in addition to the proportion of the said county rate to be paid by such parish, township, or place, whether parochial or otherwise; and such allowances, compensations, and expenses, shall and may be raised, levied, and collected by such and the like ways and means as the said county rate can or may be raised, levied, and collected, and shall be paid therewith, due distinction being made in the case of every such additional assessment between the sum or sums charged for and on account of any such expenses and the sum or sums assessed as and for the county rate." [And see 1 & 2 Geo. IV. c. 85, *post*, 226.]

Justices may order compensation to be charged upon parish or place the officer of which shall have made default.

Parishes may be assessed where no overseers or churchwardens, or where no poor's rate, or where returns insufficient.

Sect. 7. "In all cases and places as aforesaid, where there are no churchwardens or overseers of the poor, or where no rate is made and collected for the relief of the poor, or where the justices of the peace of any county or of any division thereof, assembled as aforesaid, for the purpose of receiving such returns as aforesaid of the annual value of the property chargeable to the county rate, shall be of opinion that the returns made to them do not afford a full, fair, and just account of the annual value of the property rateable, it shall and may be lawful to and for the said justices of the peace so assembled to summon before them any one or more substantial inhabitant of such places respectively, or any other person or persons whom they the said justices may think proper, to give evidence as to the fair annual value of such rateable property; and then and there to examine such inhabitant or inhabitants and other person or persons respectively on oath, (which oath any one or more of the said justices is and are hereby authorized to administer), as to the annual value of such property."

Where no poor's rate or overseer, justices to appoint.

Sect. 8. "In such place or places where there is no poor's rate, (*that is, co-extensive with the district assessed; Rex* v. *Yorkshire, W. R., ante*, 200; *and see post*, s. 13), or overseer of the poor or churchwarden, or other officer, necessary for the execution of the provisions of this act, residing within the limits of the jurisdiction of the justices of the peace of the county requiring such returns, and in which there is any property liable to the poor's rate, but not rated or assessed thereto, it shall and may be lawful for the said justices of the peace of the county, assembled as aforesaid, or for the justices of the peace resident in and acting for any division of the county in which such place or places are situate, at any petty sessions or adjournment thereof, to be holden by them within such division as aforesaid, and they are hereby authorized and required to appoint one or more person or persons to act as overseer or overseers,

or other such officer as aforesaid, who is and are hereby authorized, empowered, and required to act within such place or places respectively for effecting the purposes of this act; and such person or persons respectively shall have the like powers vested in him or them, and shall be subject to the same regulations and penalties for effecting all such purposes, as fully and effectually, to all intents and purposes, as if he or they had been appointed overseer or overseers of the poor, or churchwarden or churchwardens, or other officer or officers, under any law or laws now in force." (See 56 Geo. III. c. 49, *post*, 222; and 1 & 2 Geo. IV. c. 85, s. 2, *post*, 227).

55 Geo. 3, c 51.

Person so appointed to have full powers as if appointed overseer.

Sect. 9. "For the better enabling as well the said justices in general or quarter sessions assembled, as the justices of the several divisions acting under the order or orders of the justices assembled as aforesaid, respectively, to ascertain the fair annual value of all property liable to be so rated;" enacts, "that it shall and may be lawful to and for such justices, or any two or more of them, from time to time, whenever the same may be, in the judgment of such justices, necessary for the more correct execution of this act. to cause any of the books of assessment of any rates or taxes, parliamentary or parochial, which have lately been, are now, or shall hereafter be laid on any part of the property, liable to be assessed towards the purposes for which a county rate is applicable, and the valuation by which such assessments are or were made, mentioned, and described, within any parish or place within the limits of the jurisdiction of the said justices, in the hands of any constable, churchwarden, overseer, assessor, or collector, to be brought before them or him, and to take copies or extracts of and from such books, or any parts thereof, or to order and direct any person to take such copies or extracts from such books, in the hands of them or any of them, without having the same brought before the said justices, or to call before them any such constable, churchwarden, overseer, assessor, or collector, to give evidence respecting the same, as they, or he, or any of them, shall think fit, such compensation being made to the person or persons employed for any of the purposes aforesaid, as the said justices, or any two or more of them, shall think reasonable; and if any person or persons, in whose custody or power any of the said books may be, shall neglect or refuse to attend the said justices with such book or books, or to permit any such copies or extracts to be taken as aforesaid, or to give such information or evidence on oath as may be required by such justices, (which oath such justices, or any one or more of them, are and is hereby authorized to administer), then and in every such case, every person who shall so refuse or neglect, shall for every such offence forfeit and pay any sum not exceeding ten pounds; and moreover it shall be lawful for such justices in the like cases, from time to time to cause copies of the total amount assessed in each parish, township, or place, in respect of any aids or taxes payable to his Majesty, his heirs or successors, and the total amount of the valuation of the property on which such assessments were made in any year then elapsed, to be made out by the clerk to the commissioners of each district within the limits of the jurisdiction of such justices, such compensation being made to the respective clerks as the said justices, or any two of them, shall think reasonable; and if any such clerk shall neglect or refuse to make out such copies within a reasonable time after his receipt of the order of such justices, every such clerk shall forfeit and pay the sum of twenty pounds."

Justices empowered to call for all parliamentary and parochial assessments, &c.

May take copies or extracts from books of assessment, &c.

Persons in whose custody said books are, neglecting to attend or to permit extracts, to forfeit 10*l*.

Penalty on clerks to commissioners neglecting to make out assessments.

Sect. 10. "For the better enabling the churchwardens and overseers of the poor, chief constables, and other persons, to make accurate returns as hereinbefore required, in cases where doubts are entertained," enacts, "that it shall be lawful for them, or any of them, or for such other person or persons as they may select for that purpose, by warrant under the hands and seals of any two or more justices of the peace of the county in general or quarter sessions assembled, to enter upon,

Persons authorized to enter upon lands to ascertain value.

53 Geo 3, c 51.

Notice of intention of entry to be given.

view, and examine all and any lands or other property chargeable to the county rate, in order to ascertain the annual value at which the same ought to be charged: provided always, that no such entry shall in any case be made, unless fourteen days' previous notice of the intention of making such entry shall have been given, under the hands and seals of the justices authorizing the same, to the churchwardens or overseers, or to the person or persons appointed to act, in default of such churchwardens or overseers of the parish, township, or place, whether parochial or otherwise, and to the person or persons whose lands are to be entered upon for the purpose of making such valuation."

Justices of division to certify value ascertained to justices in quarter sessions.

Sect. 11. "Whenever the justices in general or quarter sessions assembled shall have ordered any county rate to be made, which they are hereby authorized to order from time to time whenever the same shall be necessary, and the justices in petty sessions shall by any of the aforesaid ways and means have ascertained to their own satisfaction the fair and just annual value of any or of all the rateable property within their respective divisions, and they are hereby required from time to time to certify under their hands the true amount thereof to the then next general or quarter sessions of the peace for the same county, to the intent that at such general or quarter sessions, or at some adjournment or adjournments thereof, or at some subsequent general or quarter sessions, or adjournment or adjournments thereof, the justices there assembled may from time to time, and as often as they shall deem it necessary, make a fair and equal rate on all such rateable property, or correct any inequalities which upon appeal shall be shown to their satisfaction to exist in any rate now existing or hereafter to be made."

Justices authorized to issue warrants for levying new rates, according to usual prac-

12. "And it shall be lawful to and for the justices of the peace of any county, or the major part of them, in general or quarter sessions, or at any adjournment or adjournments thereof, assembled, as often as they shall have deemed it necessary to make a rate or rates, assessment or assessments on all the rateable property within the limits of their jurisdiction, according to the fair annual value of the same, as derived from any or all of the several sources of information which are hereinbefore mentioned, and they are hereby authorized and empowered to order warrants to be from time to time issued, in the same manner as now authorized and practised by law for collecting the county rates, to the several high constables within their respective counties, ordering and requiring them to issue their warrants to the respective overseers of the poor within their respective divisions, to levy, collect, and pay to the said high constables, within a time to be named and limited in the warrant to be issued from the sessions as aforesaid, all such rate or rates, assessment or assessments, which each high constable shall and he is hereby directed and required to pay, at such time as shall be specified in such warrant, to the treasurer of the county for the time being, to be applied and disposed of in such manner and for such purposes as the county stock or rate is now applicable or may hereafter be made applicable by law: and in case any overseer or overseers of the poor, or other person appointed to act as such under the provisions of this act, in any of the several parishes, townships, or places, whether parochial or otherwise, within any county liable to pay the same, shall neglect, make default, or refuse to pay the same within the time to be specified and limited for that purpose as aforesaid, to the high constable of the division within which such overseer or overseers, or other person or persons so liable and neglecting to pay, shall reside or be appointed to act, it shall and may be lawful for any justice of the peace of the said county, upon complaint thereof made by any such high constable, by warrant under the hand and seal of any such justice, to levy the same by distress and sale of the offender's goods; and the overseer or overseers of the poor of any parish, township, or place, whether parochial or otherwise, or other person or persons appointed to act as such overseer or overseers, shall and may and is and are hereby empowered to levy

Overseer not paying county rate.

and raise, by an equal rate or assessment upon all and every the several estates and property rateable to the relief of the poor, within their respective parishes, townships, or places, whether parochial or otherwise, such sum and sums of money as shall be required and necessary, in order to raise the several sums assessed upon such parishes, townships, or places respectively; or to reimburse such overseer or overseers, or other person or persons as aforesaid, such sum or sums of money as they shall respectively have paid on account of the same; such rate or assessment to be paid by the occupier or occupiers for the time being of such estates and rateable property as aforesaid." (See, on the construction of this section, *Fernley* v. *Worthington*, 1 *Scott*, *N. R.* 432).

55 Geo. 3, c. 51.

To reimburse overseers.

Rates to be paid by the occupier.

13. Reciting "it would be inconvenient and oppressive to many townships or places, that the sum of money which may be assessed on them as or for a county rate under this act, should be paid out of any rate made for the relief of the poor, where such poor rate doth not apply separately and distinctly to the parish, township, or place," enacts, "that it shall be lawful for the justices of the peace, at their general or quarter sessions, or at any adjournment thereof, if they shall think convenient, to order the sum of money directed to be assessed as or for the county rate on any such parish, township, or place, whether parochial or otherwise, to be paid and levied on the churchwardens, overseers, or petty constables, of or for any such parish, township, or place, in such manner as the same is herein directed to be paid and levied in cases where no rate is made for the relief of the poor; any thing herein contained, or any law, usage, or custom to the contrary notwithstanding." (See 56 Geo. III. c. 49, *post*, 222, and 1 & 2 Geo. IV. c. 85, s. 1, *post*, 226).

In places where poor rate does not separately apply, justices may order county rate to be levied as when no poor rate.

14. "If the churchwarden or churchwardens, overseer or overseers of the poor, or other inhabitant or inhabitants of any parish, township, or place, whether parochial or otherwise, where there is no churchwarden or overseer, or person appointed to act as such, shall at any time have reason to think that such parish, township, or place is aggrieved by any rate now existing or hereafter to be made, either in pursuance of this act or of any act or acts now in force, whether it be on account of the proportions assessed upon the respective parishes, townships, or places being unequal, or on account of some one or more of them being without sufficient cause omitted altogether from the rate, or on account of such parish, township, or place being rated at a higher proportion of the pound sterling according to the fair annual value of the rateable property therein, or on account of some other parish or parishes, township or townships, place or places, being rated at a lower proportion of the pound sterling according to the fair annual value of the rateable property therein, than has been fixed and declared by the justices of the peace of the said county in sessions assembled, as the basis of the rate of the said county, or on account of any other just cause of complaint whatsoever; it shall be lawful for such churchwarden or churchwardens, overseer or overseers of the poor, or other inhabitant or inhabitants where there is no churchwarden or overseer, or person appointed to act as such, to appeal to the justices of the peace for the county at any general or quarter sessions, against such part of the rate only as may affect the parish or parishes, township or townships, place or places, which are unequally rated, or which shall appear to be overrated or under-rated, or omitted altogether from the rate; and the said justices are hereby empowered to hear and finally determine the same, and either to confirm such parts of the rate as have been appealed against, or to correct such inequalities, disproportions, or omissions, as shall be proved to exist therein, in such manner as to them the said justices shall appear fair, just, and equitable; any thing in this act, or any former act or acts, or any law, usage, or custom to the contrary thereof notwithstanding: provided nevertheless, that upon such appeal no such rate shall be quashed or destroyed in regard to any other parish, township, or place, unless in cases where the justices of the peace of any

Parishes aggrieved may appeal.

55 Geo. 3, c. 51.

county, in general or quarter sessions assembled, or the major part of them, shall deem it necessary to proceed to the making of an entire new rate, and shall proceed therein according to the provisions of this act." (And see stat. 12 Geo. II. c. 29, s. 12, *ante*, 206; 57 Geo. III. c. 94, ss. 1, 2, *post*, 224, 225; and 1 & 2 Geo. IV. c. 85, s. 3, *post*, 227, 228).

I think (said *Bayley*, J.) that the true construction to put on the clause giving the right of appeal is, that the parish, township, or place must be aggrieved. Here the fact stated in the notice is, that particular individuals are rated higher in the township of Shap than other individuals are in the parish of Bampton. I think that it is incumbent on a party appealing against a county rate to show that the appellant parish, township, or place is rated in a higher proportion, with reference to some other parish, than it ought to be. But no act of Parliament having required the grounds of appeal to be specified in the notice, the sessions ought either to have heard or adjourned the appeal to the next sessions. If the justices thought that the respondents were misled by the terms of the notice of appeal, they ought to have adjourned it. But they refused to hear the appeal altogether, which was improper." (*Rex* v. *Westmoreland*, 10 *B. & C.* 226).

From a perusal of this clause (said *Denman*, C. J.) it is perfectly obvious that the appeal is given to remedy total omissions of parishes from the rate, or inequalities and disproportions (in relation to each other) in their contributions thereto, and nothing else. *Individual* grievances, arising from unequal and disproportionate impositions in each of the parishes, townships, or places, are nowhere mentioned, or even alluded to. The grievances and complaints of the *whole* parish, township, or place, only are noticed, and accordingly the appeal is given exclusively to the public officer of the district or division, the churchwarden or overseer. When the word "inhabitant" is used, it is not to be understood as being applicable to *any* individual, but to such only as for the purpose of appeal, represents some place where the clause supposes neither churchwarden nor overseer to exist, and who must therefore be understood to be placed upon the same footing as churchwardens and overseers. (*Reg.* v. *Recorder of Bath*, 9 *Ad. & Ell.* 877).

A power of appeal is given by 55 Geo. 3, c. 51, s. 14, against a county rate made in fixed proportions, and invariably adopted for a series of years.

An appeal is given by this section against a county rate, though made in fixed proportions, and invariably adopted for a series of years. (*R.* v. *Js. of York*, 2 *B. & Cres.* 771). A rule had been obtained calling upon the defendants to shew cause why a writ of mandamus should not issue, commanding them to cause continuances to their next general quarter sessions of the peace to be holden in and for the said city and county, to be entered, upon the appeal of the overseers of the poor of the parish of St. Crux in the said city, against a rate or assessment made by virtue of an order of the court of general quarter sessions of the peace held for the said city and county, on Friday the 17th day of October, 1823, whereby the inhabitants of the parish of St. Crux were assessed in the sum of 32*l.* 14*s.* 9*d.* as their proportion of the sum by the court directed to be estreated on the inhabitants of the said city and county, and at such next general quarter sessions of the peace to hear and determine the merits of the said appeal. It appeared that a rate had been made and imposed upon the respective parties within the city and county in such fixed proportions as had been for a long series of years invariably adopted. Against this rate the parish of St. Crux had appealed, on the ground of being over-rated, but the sessions refused to entertain the appeal, conceiving that they were not authorized by any existing law to vary the fixed proportions of the county rates from the form in which they had for many years existed. After argument, *Abbott*, C. J., said, "We are of opinion that a power of appealing is given by the 14th section of stat. 55 Geo. III. c. 51, in a case like the present; and instead of thinking such a power at variance with the object of that act, we consider it the most convenient construction that the statute can receive.

The appeal may be made *at any time*, though the rate was made under a particular act of Parliament, which required the appeal to be made within a certain time. (*R.* v. *Js. of Buckinghamshire*, 7 *B. & Cres.* 3; *see* "*Appeal*," *Vol. I.*)

55 Geo. 3, c. 51.

Time of appeal.

In the notice of appeal the party appealing must state that he is aggrieved, or state that from which it follows of necessity that he is so; and where a notice of appeal against a county rate stated, as the ground of appeal, that the county rate was unequal and defective, inasmuch as the appellant parish was charged and assessed in the rate at a higher proportion of the pound sterling according to the fair annual value of the rateable property than the respondent parish: and the sessions, upon the hearing of the appeal, received the evidence of surveyors as to the annual value of the rateable property of both parishes, and amended the rate by altering the assessment according to the annual value of the two parishes according to the evidence so taken, but leaving the statement of the annual value of the two to remain as before. It was held, that the sessions were not warranted by the notice of appeal in so amending the rate. (*R.* v. *Blackawton*, 13 *B. & Cres.* 792).

Contents of notice of.

But it is not necessary in the notice of appeal to specify the grounds of appeal, though, if the appellant states in his notice, as causes of appeal, things which are not so, the court of quarter sessions ought to adjourn the appeal if they think the respondents have been misled by the terms of the notice, or otherwise to hear it. (*R.* v. *Js. of Westmoreland*, 10 *B. & Cres.* 226).

Fourteen clear days' notice of appeal must be given to the parties against whose rate the appeal is to be made, the clerk of the peace of the county and the hundred constable, of the intention to try such appeal at the next general or quarter sessions of the peace. (57 Geo. III. c. 94, s. 2, *post*, 225).

Notice of appeal.

As to *certiorari* to remove rates, see 12 Geo. II. c. 29, s. 21, *ante*, p. 208.

Where the rate is levied by distress on the goods of the persons liable, (as in extra-parochial and other places within the 1 & 2 Geo. IV. c. 85) sect. 3 (*post*, 227, 228) gives an appeal to the next general or quarter sessions.

Sect. 15, which enacts that the expense of appeals shall be paid by parishes, or persons appealing, is repealed by the 57 Geo. III. c. 94, s. 3; and by sect. 4 the expenses shall be paid in such proportions as the justices shall award, (*post*, 225).

Sect. 16. "It shall and may be lawful for the justices of the peace of any county, in general or quarter sessions, or any adjournment thereof, from time to time assembled, to order such allowances and compensations to be made to the overseers, churchwardens, constables, assessors, collectors, clerks, or other persons employed in the execution of this act, which have not hereinbefore been provided for, from, by, and out of the monies assessed, levied, and collected by any county rate made under this or any former act or acts, as to the said justices shall appear reasonable and proper."

Power to justices to compensate persons employed out of county rates.

It is questionable whether the sessions have power under this enactment to make any compensation to the clerk of the peace. (*See* "*Clerk of the Peace*," *Vol. I.*)

Sect. 19. "The justices of the peace of the said several counties are hereby authorized and empowered to demand and take, whenever they shall think fit, good and sufficient security, to be approved of by the said justices in general or quarter sessions assembled, from the high constables employed in the collecting and levying the rates; and that if any such high constable, upon being so called upon by the said justices, shall neglect or refuse to give such security as shall be approved by them, it shall then be lawful for the said justices of the peace in quarter sessions assembled to order and direct the churchwardens and overseers of the poor, or other persons appointed to assess, collect, and

High constables to give security.

55 Geo. 3, c. 51.

levy the rates of any parish, township, or place, to pay the quota which shall be assessed thereupon towards the county rate to the treasurer of the county, division, or place in which such parish, township, or place shall be situate; and the receipt of such treasurer shall be a sufficient discharge for the same." (See sect. 2 of 57 Geo. III. c. 94, as to Exclusive Jurisdictions, *post*, 225).

A chief constable appointed for one of the divisions of a riding gave a bond to the clerk of the peace, with condition that he should well and faithfully execute his office, should pay, apply, and account for all sums of money coming to his hands as chief constable of his division, and should in all other respects perform and observe all such orders and directions as should be made or given to him in respect of his said office. The justices of the riding having ordered a rate to be levied on the inhabitants according to a certain valuation, the constable collected from his division and paid over to the treasurer an undue proportion of rate. The justices in sessions resolved that the bond was forfeited, but that no proceedings should be taken upon it. Application being made to this court on behalf of some of the parties aggrieved for a mandamus to the justices or clerk of the peace to put the bond in suit, the court refused a rule to show cause. (*Re Lodge*, 2 *Ad.* & *El.* 123).

Semble, that the taking of a bond with the above condition is not warranted by the above 19th section. (*Id.*)

Former acts extended to this. 12 Geo. 2, c. 29.

Sect. 20. "All and every the clauses, powers, directions, provisions, and authorities contained in the said act made in the twelfth year of his late Majesty King George the Second, intituled 'An Act for the more easy assessing, collecting, and levying County Rates;' and also so much of another act made in the thirteenth year of the reign of his said late Majesty King George the Second, intituled 'An Act to continue several acts therein mentioned, for punishing such persons as shall wilfully and maliciously pull down or destroy turnpikes; for repairing highways, or locks or other works erected by authority of Parliament; for making rivers navigable; for preventing exactions of the occupiers of locks and weirs upon the river of Thames westward, and for ascertaining the rates of water carriage upon the said river; for preventing frivolous and vexatious arrests; and for better securing the lawful trade of his Majesty's subjects to and from the East Indies, and for the more effectual preventing all his Majesty's subjects trading thither under foreign commissions; and for limiting the time for suing forth writs of *certiorari* upon proceedings before justices of the peace, and for regulating the time and manner of applying for the same; for the better and more speedy execution of process within particular franchises and liberties: and for extending the powers and authorities of justices of the peace of counties touching county rates, to the justices of the peace of such liberties and franchises as have commissions of the peace within themselves,' as relate to county rates (save and except such parts thereof respectively as are hereby varied, altered, or repealed), shall be good, valid, and effectual, for the purposes of assessing, levying, collecting, and enforcing the payment of the rate or rates hereafter to be made in pursuance of this act, and for carrying this act into execution."

13 Geo. 2, c. 18.

Counties where rates have been regulated by particular acts, authorised to make use of the provisions of this act.

Sect. 21. Reciting "that several acts have passed in the reign of his present Majesty, and are now in force, empowering the justices of the peace of certain counties to make fair and equal county rates within the respective counties," enacts, "that it shall and may be lawful to and for the said justices respectively, and they are hereby empowered, at any time and at all times after the passing of this act, to proceed in the assessing, levying, and collecting, and enforcing the payment of the county rate, and in all matters relating to the equalizing the same, either under the authority and according to the provisions and enactments of this act, or under the authority and according to the provisions and enactments of the particular acts effecting their respective counties, as to them shall seem fit and proper, in all cases in which the provisions

and enactments of this act are not inconsistent with the provisions and enactments of such particular acts." (See 56 Geo. III. c. 49, s. 2, *post*, 222; and 1 & 2 Geo. IV. c. 85, s. 1, *post*, 226).

55 Geo. 3, c. 51.

Sect. 22. "The several forfeitures and penalties inflicted by this act shall, if not immediately paid, be levied by distress and sale of the offender's goods and chattels, by virtue of any warrant under the hand and seal of any one justice of the peace for the county, not only in the county in which the offence shall have been committed, but in any other county, city, town, borough, franchise, or place, (the warrant or warrants for levying the same being in such last-mentioned case first indorsed by some justice of the peace for the county, or mayor, or other head officer of the city, town, borough, or franchise, where any goods of the respective defaulters shall be found), returning the overplus (if any) after the charges of such distress and sale shall be deducted; and in case sufficient distress shall not be found, then it shall be lawful for such justices to commit the offender to the common gaol of the said county, there to remain without bail or mainprize for any time not exceeding three calendar months, unless the forfeitures and charges be sooner paid; and the said forfeitures, when recovered, shall be paid to the treasurer of the county, or of any division thereof, in which they shall have been incurred, to be applied in aid of the rates of the said county or division thereof; and no person shall be deemed incompetent to be a witness for the execution of the purposes of this act, or in any appeal or other proceeding instituted by virtue thereof, by reason of his paying or being liable to pay towards the poor rates or county rates within the said county."

Forfeitures, &c. how to be levied and applied.

Persons paying county rates deemed competent witnesses.

Sect. 23. "No action or suit shall be brought, commenced, or prosecuted against any person or persons, for any thing done or to be done by virtue of or in pursuance of this act, after three calendar months next after the fact committed; and every such action shall be brought and laid in the county where the cause of action shall have arisen, and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead at his, her, or their election, this act specially or the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance or by the authority of this act; and if upon trial of such action or suit it shall appear to have been so done, or that such action or suit shall have been brought after the time limited for bringing the same as aforesaid, or be brought or laid in any other county than as aforesaid, then and in every the said cases the jury shall find a verdict for the defendant or defendants; and in all cases where a verdict shall be found for any defendant or defendants in such action or suit, or the plaintiff or plaintiffs therein shall discontinue the same after the defendant or defendants shall have appeared thereto, or shall be nonsuited, or if upon demurrer, judgment shall be given against such plaintiff or plaintiffs, then and in every such case the defendant or defendants shall recover treble costs, and have the like remedy for recovering the same as any defendant or defendants hath or have for recovering costs of suit in any other cases by law." (See 12 Geo. II. c. 29, s. 24, *ante*, 209).

Limitations of actions (*a*).

May plead general issue.

Treble costs (*b*).

Sect. 24. "Where any ridings or divisions have separate commissions of the peace, or where any cities, towns, or other places within that part of Great Britain called England, have commissions of the peace within themselves, and are not subject to the jurisdiction of the commissions of the peace for the counties at large in which such liber-

Extending provisions of act to places that have commissions of peace within themselves.

(*a*) *See* "*Constables*," *Vol. I.*; "*Justices*," *Vol. III.*

(*b*) The 5 & 6 Vict. c. 97, s. 3, repeals this and similar clauses in all public acts, and enacts, that instead of such treble costs the parties shall receive such full and reasonable indemnity as to all costs, charges, and expenses incurred in and about any action, suit, or other legal proceedings, as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxations of costs by such officer.

55 Geo. 3, c. 51.

ties or franchises lie, and do not nor did before the passing of this act, contribute or pay to the several rates made for the said counties at large, it shall and may be lawful to and for the justices of the peace of such separate jurisdictions within the respective limits of their commissions, to have, use, and exercise all and singular the powers, authorities, and methods, given or prescribed by this act; and all such separate jurisdictions are hereby declared to be subject thereto, in the same manner to all intents and purposes as counties at large; any law, usage, or custom to the contrary notwithstanding." (See the cases of *Mercer* v. *Davis*, 10 *B. & Cres.* 617; *R.* v. *Shepherd*, 4 *Nev. & M.* 185; 2 *Ad. & Ell.* 298; *R.* v. *Berwick-upon-Tweed*, 8 *Ber. & Cres.* 327; *ante*, 203).

Explanatory act of 56 Geo. 3, c. 49.

Stat. 56 Geo. III. c. 49, after reciting stat. 55 Geo. III. c. 51, "and that by the said recited act, (*vide* s. 8), the justices of the peace of the several counties, ridings, or divisions of counties, cities, towns, or other places having commissions of the peace within themselves, in that part of Great Britain called England, are authorized and empowered to assess and tax, for the purposes of the said act, every parish, township, and other place, whether parochial or extra-parochial, within the respective limits of their commissions, according to a certain pound rate of the full and fair annual value of the messuages, lands, tenements, and hereditaments, rateable to the relief of the poor therein; and doubts have arisen under the said act, whether any messuages, lands, tenements, or hereditaments, situate within any extra-parochial or other place where no rate for relief of the poor is made and collected, could be made subject to the county rate to be raised under the said act, and it is expedient that such doubts should be removed," enacts "that all messuages, lands, tenements, and hereditaments, situate, lying, or being in any extra-parochial place or other places, whether rated to the relief of the poor or not so rated, although the same may not be deemed rateable to the relief of the poor within such extra-parochial places, or other places where no rate is made for the relief of the poor, shall be, and the same are hereby declared to be subject to be assessed, taxed, and rated by and under the order, direction, and authority of justices of the peace, in such and the same manner as the messuages, lands, tenements, and hereditaments, within any parishes or places where a rate is made for the relief of the poor; and the justices of the peace shall in all cases, where the same may be necessary, appoint proper persons within such extra-parochial or other places, as directed in and by the said recited act, for the assessing, taxing, and rating such extra-parochial messuages, lands, tenements, and hereditaments, and levying, collecting, and paying over such assessments, taxes, or rates, under the provisions of the said recited act." (See 1 & 2 Geo. IV. c. 85, *post*, 226).

Extra-parochial and other places, though not deemed rateable to relief of poor, subject to be rated to county rate.

Justices in sessions to appoint justices to fix boundaries between counties, ridings, &c. and other places of distinct and separate jurisdiction (a).

Sect. 2. Reciting that "doubts have arisen and may arise touching the boundaries of counties, ridings, and divisions and parts of counties, and other places of distinct and separate jurisdiction, and touching the jurisdictions of justices of the peace in relation thereto, under the provisions of the said recited act; and it is expedient that such doubts should be removed, and that boundaries should be ascertained in all such cases, for the purposes of carrying the said recited act into execution," enacts, "that the justices of the peace of counties and ridings, and divisions and parts of counties, and other places of distinct and separate jurisdiction, in that part of Great Britain called England, assembled at their several and respective general or quarter sessions of the peace, or at any adjournment thereof, shall be and they are hereby authorized and required, in any case in which any question or doubt does or shall exist, or shall have arisen, or may in the judgment of the said justices be likely to arise, as concerning any boundary between any

(a) See the 9 Geo. IV. c. 43; 10 Geo. IV. c. 46; and 6 Will. IV. c. 12, relating to the division of counties, *ante*, "*County*" 185.

counties, ridings, divisions, or parts of any county, or other places of distinct and separate jurisdiction, for which they respectively act as such justices, to nominate and appoint two justices of the peace of each such county, riding, division, or parts of any county, or other places of distinct and separate jurisdiction, between which the boundary is required to be ascertained, for the purpose of fixing and determining such boundary, and the clerks of the peace, town clerks, and other proper officer of the several and respective general or quarter sessions of the peace at which such justices shall be appointed, shall forthwith give notice to each other and to such justices of such appointment; and the justices so appointed shall in every such case, as soon as may be after their appointment, meet and proceed to ascertain the boundary, upon such evidence as can be obtained by them, or as they shall deem necessary for that purpose, either by examination of witnesses upon oath, (which oath any one of the said justices is hereby empowered to administer), or of any maps, plans, surveys, or any other records or documents, or in such other manner as they the said justices so appointed shall think requisite; and it shall be lawful for such justices, or for any persons authorized, under the hand of any three or more of such justices, to enter upon any lands, grounds, or premises, for the purpose of examining the same, or making any measurement, maps, or plans thereof, for the purposes aforesaid; and it shall be lawful for the said justices to summon any witnesses to be examined in that behalf, and to impose any penalty or forfeiture not exceeding 10*l.* upon any witness who shall, without reasonable excuse, refuse or neglect to attend to be examined upon any such summons, which penalty or forfeiture may be recovered as any penalty or forfeiture may be recovered under any of the provisions of the said recited act; and such justices shall thereupon fix, ascertain, and determine the boundary so referred to them to be ascertained, and shall cause the boundary so fixed and determined to be laid down on two maps or plans, to be signed by the said justices so appointed as aforesaid, which shall be deposited with the clerks of the peace, town clerks, or other proper officer, for the counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction, between which such boundary shall be so fixed and determined, and which maps and plans shall be kept amongst the records of their respective sessions, and shall be received as evidence of such boudaries; and such boundaries so fixed and determined shall be and be deemed the boundaries between the respective counties, ridings, divisions, or parts of counties, or other places of distinct and separate jurisdiction, for which the same shall have been so ascertained, for all the purposes of this and of the said recited act, and the carrying the provisions thereof respectively into execution; any thing contained in any other act or acts of Parliament, relating to such counties, ridings, divisions, or parts of such counties, or other places of distinct and separate jurisdiction, or any law, usage, or custom to the contrary notwithstanding." (See 1 & 2 Geo. IV. c. 85, *post*, 226). 56 Geo. 3, c. 49.

Sect. 3. "If any of the four justices so appointed as aforesaid, or who shall be appointed in manner hereinafter mentioned, shall, before the execution of all the powers and authorities hereby in them respectively vested, die, decline or refuse to act, or become incapable of acting, the justices of the peace of counties, ridings, divisions, and parts of counties, and other places of distinct and separate jurisdiction, assembled at their several and respective general or quarter sessions of the peace, or at any adjournment thereof, from which such justice so appointed or to be appointed shall die, decline, refuse to act, or become incapable of acting, shall, and they are hereby authorized and required to appoint another justice in the room of him so dying, declining, refusing to act, or becoming incapable of acting as aforesaid, and so from time to time as often as any justice so to be appointed as last aforesaid shall die, decline or refuse to act, or become incapable of acting; and every justice to be appointed as aforesaid shall have the like power and authority as the Appointment of new justices.

56 Geo. 3, c. 49.

justice in whose place he shall be appointed was invested with by virtue of this act; and that notice shall be given by the clerks of the peace, town clerks, or other proper officer, to such justice of his appointment, in manner hereinbefore directed."

In case of difference between justices, a referee to be appointed to meet them, and determine boundary.

Sect. 4. "If it shall happen that the justices so appointed to fix, ascertain, and determine the boundaries as aforesaid, shall disagree in opinion touching the boundary between any county, riding, division or parts of any county, or other place of distinct and separate jurisdiction, so referred to them under and by virtue of this or the said recited act, and there shall be no equality of votes, so that the said justices cannot make any determination thereon, then and in such case the said justices, or the major part of them, shall forthwith appoint under their hands such person as they may think proper to act as the referee, which person so appointed as referee shall, within twenty-one days from the receipt of such appointment, fix a time and place to meet such justices; and at such meeting the said person so to be appointed as referee as aforesaid shall, together with the said justices to whom any boundary shall be referred to be ascertained as aforesaid, proceed to fix, ascertain, and determine the boundary about which such disagreement shall take place amongst them the said justices, in such and the same manner and with such and the like powers in all respects as hereinbefore expressed, and that the determination and decision of the said justices, and of the person whom they shall appoint as referee as aforesaid, or of the major part of them, shall be for ever binding and conclusive; and that the said justices, and the person whom they shall appoint as referee as aforesaid, or the major part of them, shall cause the boundary so fixed and determined to be laid down on two maps or plans, to be signed by the said justices and the person so appointed as referee as aforesaid, or by the major part of them, which shall be deposited with the clerks of the peace, town clerks, or other proper officer, as hereinbefore directed, and kept amongst the records of their respective sessions, and shall be received as evidence of such boundaries; and such boundaries, so fixed and determined, shall be and be deemed the boundaries between the respective counties, ridings, divisions or parts of counties, or other places of distinct and separate jurisdiction, for which the same shall have been so ascertained for all the purposes of this and of the said recited act, and the carrying the provisions thereof respectively into execution, anything contained in any other act or acts of Parliament relating to such counties, ridings, divisions or parts of such counties, or other places of distinct and separate jurisdiction, or any law, usage, or custom to the contrary notwithstanding."

Sect. 5, which directs how appeals are to be proceeded in, is repealed by stat. 57 Geo. III. c. 94, s. 1.

Act not to determine any question of boundary.

Sect. 6. "Nothing in this act contained, nor any proceedings under the same, shall extend or be construed to extend, to determine any question of boundary for any purpose, except for the purpose of assessing, collecting, and levying rates, according to the provisions of this act, and of the said recited act."

Former act extended to this act.

Sect. 7. "All the powers, authorities, provisions, clauses, and regulations, contained in the said recited act, shall be deemed and taken to apply to this act, as if the same were severally and respectively repeated and re-enacted in this act; and this act and the said recited act shall be construed as one act."

57 Geo. 3, c. 94. So much of 56 Geo. 3, c. 49, as respects appeals &c. repealed.

By stat. 57 Geo. III. c. 94, intituled "*An Act to amend an Act of the last Session of Parliament, for the more easy assessing of County Rates,*" reciting stat. 56 Geo. III. c. 49, and that "it is expedient to repeal so much of the said act as directs, that in all cases in which any appeal or appeals shall be made under the said recited act, (55 Geo. III. c. 51), to any rate or assessment made in pursuance thereof or of this act, the same should be made to the next general or quarter sessions of the peace after the cause of appeal shall have arisen, and that fourteen clear days'

notice in writing should be given of the intention to try such appeal previous to such general or quarter sessions; and that notwithstanding such appeal or notice thereof, the rate or rates made upon any parish, township, or place, (whether parochial or otherwise), under the said recited act and this act, should be paid, and should and might be levied, recovered, and received in the same manner as if no appeal had been made or notice given thereof; and that if upon the hearing of any such appeal or appeals, the court of general or quarter sessions of the peace should order any rate or assessment to be decreased or lowered, and it should appear to the said court that any parish, township, or place have or hath, previously to the hearing such appeal or appeals, paid any sum or sums of money in consequence of such rates or assessments, which ought not to have been paid or charged therein, then and in every such case the said court should order all and every such sum and sums of money to be repaid and returned to the person or persons, parish, township, or place, having paid the same respectively:" it is enacted, "that the hereinbefore recited provision shall be and the same is hereby repealed."

57 Geo. 3, c. 94.

Sect. 2. "From and after the passing of this act, the rate or rates made upon any parish, township, or place, (whether extra-parochial or otherwise), under any act or acts passed for the assessing, collecting, and levying of county rates, shall be paid, and shall and may be levied, recovered, and received, notwithstanding any appeal or appeals may have been made to the general or quarter sessions of the peace against any such rate or rates; and such rate or rates shall continue to be raised, levied, and received, until the decision of the justices shall be made upon such appeal or appeals: provided always, that if upon the hearing of any such appeal or appeals the court of general or quarter sessions of the peace shall order any rate or assessment to be set aside, decreased, or lowered, and it shall appear to the said court that any parish, township, or place have or hath, previously to the determination of such appeal or appeals, paid any sum or sums of money in consequence of such rates or assessments, which ought not to have been paid or charged therein, then and in every such case the said court shall order such proportion of such sum or sums of money as shall have been so paid by any person or persons, parish, township, or place, subsequently to the notice which shall have been given of such appeal or appeals, to be repaid and returned to the person or persons, parish, township, or place, which have or hath paid the same respectively, out of the general rate of the county in which the cause of appeal shall have arisen: provided always, that fourteen clear days' notice in writing shall be given by the parties intending to appeal against any rate or assessment, to the parties against whose rate the appeal is to be made, the clerk of the peace of the county, and the hundred constable, of the intention to try such appeal at the next general or quarter sessions of the peace; any thing in any act or acts to the contrary notwithstanding."

Rate to be raised notwithstanding appeals, until determination of justices.

In case justices order rate to be set aside, decreased, or lowered.

Money paid subsequent to the time of appeal to be returned out of the general county rate.

Notice of appeal.

Sect. 3. "So much of the said recited act as directs that the expenses of all appeals, actions, suits, or proceedings at law, in respect of any thing done in pursuance of the said recited act, shall be paid by such respective parishes, townships, places, and persons as the said justices in general or quarter session shall direct, or such court wherein such proceeding shall be instituted shall order, and shall not be charged to or be paid out of the county rate, shall be and the same is hereby repealed."

So much of recited act as directs that the expenses of appeal shall be paid by such parishes as the justices shall appoint, repealed.

Sect. 4. "In case of any appeals, actions, suits, or proceedings at law respecting anything done in pursuance of this act, or any other act or acts relating to the county rate, the expenses of all such appeals, actions, suits, or proceedings at law shall be borne and paid by such respective parishes, townships, places, and persons, or such of them, and in such proportions, as the said justices shall upon any appeal in their general or quarter sessions award and order, or as such courts wherein

Expenses of appeals shall be paid in such proportions as the justices shall award.

57 Geo. 3, c. 94.

such actions, suits, or proceedings shall be instituted shall adjudge and order."

Where there are no high constables, other constables may levy the rates.

Sect. 5. "And whereas there are several parishes, townships, and places in and over which the high constables have no jurisdiction," it is enacted, "that in all such cases it shall be lawful for the justices of the peace of any county in which such parishes, townships, or places shall be situate, to issue their warrants for collecting the county rate to one or more of the constables of such parishes, townships, or places, and such constable or constables shall collect, levy, and pay such county rate in such and the like manner as the high constables are by the said act empowered and required to do, and shall be subject to the like penalties in case he or they shall neglect to demand, levy, or account for such county rates, as the said high constables are subject or liable to by any law or statute now in force."

1 & 2 Geo. 4, c. 85, to amend the foregoing acts.

The 1 & 2 Geo. IV. c. 85, intituled "*An Act to explain and amend several Acts relating to the Assessing, Levying, and Collecting the County Rates,*" s. 1, after reciting stats. 12 Geo. II. c. 29, 13 Geo. II. c. 18, 55 Geo. III. c. 51, 56 Geo. III. c. 49, and 57 Geo. III. c. 49, and that "whereas there are several parishes, townships, hamlets, and places, situated in and extending into two or more counties, ridings, or divisions, having separate and distinct commissions of the peace, part of such parishes, townships, hamlets, and other places being situated in one county, riding, or division, and other part or parts thereof in another county or other counties, riding or ridings, division or divisions, and the messuages, lands, tenements, and hereditaments situated in such parishes, townships, hamlets, or other places, are rateable to the relief of the poor therein, and to the county rates of the respective counties, ridings, or divisions, in which such messuages, lands, tenements, and hereditaments are respectively situated; but the constables, churchwardens, and overseers are appointed for the whole of such parishes, townships, hamlets, or places, and it frequently happens that such constables, churchwardens, and overseers are resident in one division of such parishes, townships, hamlets, or other places, and that there are no constables, churchwardens, or overseers residing in the other division thereof, or within the limits of the jurisdiction of the justices making such county rate or rates, whereby considerable difficulties have in such cases arisen in raising the county rates in such divisions;" enacts "that from and after the passing of this act, all and every the powers and provisions, clauses, pains, penalties, and forfeitures, given, granted, provided, made, or imposed, by the said recited acts or any of them, shall extend, and be deemed, construed, and taken to extend to all cases and places as aforesaid, where there are no separate churchwardens or overseers of the poor, or where no separate or distinct rate is made and collected for the relief of the poor of any such division, or part of any parish, township, or place, situated in and extending into two or more counties, ridings, or divisions as aforesaid, as fully and effectually to all intents and purposes as if the said several powers, provisions, clauses, pains, penalties, and forfeitures, were herein and hereby repeated and re-enacted as to all such cases and places aforesaid; and that from and after the passing of this act, all and every the constables, churchwardens, and overseers of any such parishes, townships, hamlets, or other places as are situated in and extend into two or more counties, ridings, or divisions, having separate and distinct commissions of the peace as aforesaid, shall be subject to the precepts, warrants, orders, and directions of the several justices of the peace for the respective divisions or parts of such parishes, townships, hamlets, or other places, so far as the same may relate to the making of the returns required by the said recited acts or any of them, and the assessing, levying, and collecting of the proportion of the county rate for such respective divisions or parts of such parishes, townships, hamlets, or other places, or otherwise

Powers of recited acts to extend to places where there are no separate churchwardens, &c., or where no separate or distinct poor rate is made for any place extending into two or more counties, &c.

to the execution of the said recited acts, and of any other acts relating thereto, within the parts of such parishes, townships, hamlets, or other places, as shall be situated within the limits of the jurisdiction of the justices making and issuing such precepts, orders, warrants, and directions, and shall be subject to the same fines, penalties, and forfeitures for neglect and disobedience of the precepts, warrants, orders, and directions of such justices, so far as the same shall relate to the matters aforesaid or any of them, or otherwise to the execution of the said recited acts or any other acts relating to the assessing, levying, and collecting of the county rate within the limits of the jurisdiction of the justices making and issuing such precepts, warrants, orders, and directions as such constables, churchwardens, and overseers, or other officers would by the laws now in force be subject and liable to if such constables, churchwardens, overseers, or other officers had resided within the limits of the jurisdiction of the justices making and issuing such precepts, warrants, orders, and directions: provided always, that nothing herein contained shall extend or be construed, deemed, or taken to extend to authorize any justice or justices of the peace to act in the cases aforesaid, or any of them, beyond the limits of the jurisdiction within which he or they shall be generally appointed and authorized to act as such justices."

1 & 2 Geo. 4, c. 85.

Justices not to act beyond their jurisdiction.

Sect. 2. "And whereas by the said recited act of the fifty-sixth year of the reign of his late Majesty, it was enacted, that all messuages, lands, tenements, and hereditaments, situate, lying, or being in any extra-parochial place or other places, whether rated to the relief of the poor or not so rated, although the same might not be deemed rateable to the relief of the poor within such extra-parochial places or other places where no rate is made for the relief of the poor, should be and the same were thereby declared to be subject to be assessed, taxed and rated, by and under the order, direction, and authority of justices of the peace, in such and the same manner as the messuages, lands, tenements, and hereditaments, within any parishes or places where a rate is made for the relief of the poor; and that the justices of the peace should, in all cases where the same might be necessary, appoint proper persons within such extra-parochial or other places, as directed in and by the said therein recited act of the fifty-fifth year of the reign of his late Majesty, for the assessing, taxing, and rating such extra-parochial messuages, lands, tenements, and hereditaments, and levying, collecting, and paying over such assessments, taxes, or rates under the provisions of the said recited act: and whereas there are extra-parochial and other places where no rate is made for the relief of the poor, in which there are no messuages, or no person or persons resident proper to be appointed for the assessing, taxing, and rating such extra-parochial, or other places, and levying, collecting, and paying over such assessments, taxes, or rates under the provisions of the said last recited act; and it is expedient that in those cases the justices of the peace should be authorized and empowered, in their discretion, to appoint proper persons, who do not reside within such extra-parochial or other places, to assess, tax, and rate all messuages, lands, tenements, and hereditaments situated in such extra-parochial or other places;" it is enacted, "that the justices of the peace in and for any county, riding, or division, shall in all such cases, where they shall deem it necessary, appoint proper persons within such county, riding, or division, as directed in and by the said recited act of the fifty-fifth year aforesaid, whether such persons do or do not reside within such extra-parochial or other place as aforesaid, to assess, tax, and rate all such messuages, lands, tenements, and hereditaments as are situated in such extra-parochial or other places as aforesaid; anything in the said last-recited act to the contrary in anywise notwithstanding."

In extra parochial places, where no poor rate is made, justices may appoint persons to tax and assess county rate.

Sect. 3. "For the more effectually levying money assessed for the purposes aforesaid," enacts "that the goods of any person assessed, or

Goods of persons liable to rates may be seized by distress

1 & 2 Geo. 4, c. 85.

In other place than place of assessment, &c.

by the said recited acts, or this or any of them, made liable to pay the rates thereby authorized to be raised and levied, or any proportion thereof, for any county, riding, division, city, borough, town corporate, or place, and refusing to pay, may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county, riding, division, city, borough, town corporate, or place, on oath made thereof before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant), such goods may be levied in such other county, riding, division, city, borough, town corporate, or place, by virtue of such warrant and certificate; and if any person shall find himself or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same."

Appeal to quarter sessions.

Where sufficient distress cannot be found in one county, &c., justices of other counties may indorse the warrant and direct distress to be levied.

Sect. 4. "In all cases where any penalty, forfeiture, fine, or other money may, under or by virtue of the said recited acts or this act, or any of them, by the warrant of any justice or justices of the peace, be directed to be levied by distress and sale of the goods and chattels of any person or persons, if sufficient distress cannot be found within the limits of the jusrisdiction of the justice granting such warrant of distress, on oath thereof made by one witness before any justice of the peace of any other county, riding, division, city, borough, town corporate, or place (which oath shall be by him certified by indorsement on such warrant), such penalty, forfeiture, fine, or other money, or so much thereof as may not have been before levied or paid, shall and may, by virtue of such warrant and indorsement, be raised and levied by the person or persons to whom such warrant of distress shall have been originally directed, by distress and sale of the goods and chattels of such person or persons in such other county, riding, division, city, borough, town corporate, or place; and the money arising by such distress and sale shall be applied and disposed of for such purpose, and in like manner, as if sufficient goods and chattels of such person or persons had been found within the jurisdiction of the justice originally granting such warrant; and if no such distress can be found, such offender or offenders shall and may be forthwith proceeded against according to law."

Justices not accountable for irregularities.

Sect. 5. "No justice who shall indorse any certificate upon, or authorize the execution of any such warrant of distress, which may not have been granted within his jurisdiction, shall be answerable or accountable for any irregularity which may have been committed or done in or about the obtaining or granting of such warrant of distress."

4 & 5 Will. 4, c. 48.

By the 4 & 5 Will. IV. c. 48, intituled "*An Act to regulate the Expenditure of County Rates and Funds in aid thereof*," [13th August, 1834,] reciting, "Whereas by divers statutes now in force the justices of the peace in that part of Great Britain called England, within the respective limits of their commissions assembled at their general or quarter sessions, or at any adjournment or adjournments thereof, are authorized and empowered to make and assess the county rate, and also to make orders for the application or management of the county stock or rate, and of any fund or funds used or applied in aid thereof: and whereas doubts have arisen whether, under the powers and directions of the said statutes, it is requisite that the business relating to the assessment, application, or management of the said county stock or rate, and of the funds in aid thereof, should be carried on and transacted by the said justices so assembled as aforesaid publicly and in open court at such general or quarter sessions, or any adjournment thereof; and a practice hath in some counties prevailed of transacting such business in

private, which hath been found inexpedient: and for the removal of such doubts, preventing of such practice for the future," it is declared and enacted, "that from and after the passing of this act all business appertaining to the assessment, application, or management of the county stock or rate, or of any fund or funds used or applied in aid thereof or contributory thereto, or to any matter or things whereby or in respect whereof the said county stock or rate is or may be chargeable by law, which by any statute or statutes now in force the justices of the peace for that part of Great Britain called England are authorized and directed to do and transact at the general or quarter sessions, or at any adjournment thereof, shall be done and transacted publicly and in open court at such general or quarter sessions, or adjournment thereof, and not otherwise; and that no order of such justices relating to the matters aforesaid shall be binding or effectual unless the said order shall have been made and the business relating thereto shall have been done and transacted publicly and in open court as aforesaid."

4 & 5 Will. 4, c. 49.

All business relating to the assessment and application of county rate shall be transacted in open court.

2. "Public notice shall be given, in two newspapers generally circulating in the county, of the time of holding the general or quarter sessions, or any adjournment thereof, at least two weeks before the time of holding the same, and also of the day and hour at which the business relating to the assessment, application, or management of the county stock or rate will commence at such sessions."

Notice thereof to be given.

3. "This act shall extend and apply only to justices of the peace of the several counties at large in England and Wales, and of the several counties of cities and counties of towns within the same."

Act to extend to counties in England and Wales only.

This act merely changes the place where the business of allowing the accounts was to be transacted before the act, but takes no power relating to them from the justices; and no rate-payer or other person, other than a member of the court, is entitled in any way to interfere with the jurisdiction of the justices, or to take any part in the proceedings. (*R.* v. *Justices of Nottingham*, 5 *Nev. & M.* 160; 3 *Ad. & Ell.* 500).

A mandamus will not go to inspect the accounts relating to county rates on an application made to the court of quarter sessions for the inspection whilst the court was in actual discussion upon the accounts. (*Id.*)

Mandamus to inspect accounts relating to county rates.

The 5 & 6 Will. IV. c. 76, s. 92, regulates the rates in boroughs. (*See* "*Corporations*," *ante*, 95).

Borough rates.

As to police rates in the nature of a county rate, *see Vol. I., tit.* "*Constable.*"

Police rates.

Forms.

(1). Precept from justices in sessions to collect a county rate (*a*).

To the High Constable of the hundred of in the county of .

County of } WE the undermentioned justices, in her Majesty's name, hereby command you, within days after receipt hereof, to demand, collect, and receive of and from the overseers of the poor, and other persons appointed to act as such, of the several parishes and places hereunder named, (being within your said hundred), the several and respective sums of money hereunder set down and expressed opposite to and against the names of such parishes and places; the said several sums being respectively charged and assessed thereon in and by a rate or order made at the last general quarter sessions of the peace held at , in and for the said county, for and towards one general rate or assessment made for raising such sum and sums of money within the hundred of , in the said county, as may be sufficient to answer the several county charges, expenses, and purposes, to which the public stock of

(*a*) See the 55 Geo. III. c. 51, s. 12 (*ante*, 216), and the 12 Geo. II. c. 29 (*ante*, 199). By the 55 Geo. III. c. 51, s. 5 (*ante*, 213), where there are no high constables other constables may levy the rates.

Forms.

the county is applicable by law; and you are hereby also commanded, that upon the receipt of the said several sums of money, you do pay the same at or before the next general quarter sessions of the peace to be held at , in and for the said county, into the hands of C. T., Esquire, the treasurer appointed to receive the same. And if any of the overseers of the poor, or other persons appointed to act as such, of the said several parishes and places, shall refuse or neglect to pay the same within days next after you shall have demanded the same in writing given to the said churchwardens or overseers of the poor, or any of them, or left at their or any of their dwelling-house or houses, or affixed on any of the church doors of such parishes or places to which such overseers, or persons appointed to act as such, shall belong, that then you inform us, or some other of her Majesty's justices of the peace in and for the said county thereof, that such further proceedings may be had and taken as the law directs. And herein fail not at your peril. Given under our hands and seals, at , in the said county, the day of , in the year of our Lord 18 .

J. P.
R. S.

[Here follows a list of the parishes and places above referred to, and the sums charged and assessed thereon.]

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(2). High constable's warrant thereon to levy the rate, directed to the churchwardens, &c.

County of } To the Overseers of the Poor of the township [or "*parish*"] *of , in the said county.*

BY virtue of an order of her Majesty's justices of the peace in and for the said county, in their general [or "*quarter*"] *sessions assembled, you are hereby required in days' time from your receipt of this precept, or otherwise having had due notice thereof, to pay to me out of the money by you collected or to be collected for the relief of the poor, the sum of , being the proportion of your said township* [or "*parish*"] *for and towards the general county rate. And herein you are not to fail, on the peril that shall ensue thereof. Given under my hand the day of , in the year of our Lord* 18 .

J. B., High Constable.

Or, in the northern counties, the justices, if they think fit, instead of ordering the money to be paid by the churchwardens and overseers, may order it to be paid by the petty constables; and then the high constable's precept to the petty constables may be thus:—

(2). The like, to the petty constables.

County of } To the Constable of the township [or "*parish*"] *of , in the said county.*

BY virtue of an order from her Majesty's justices of the peace in and for the said county, in the general [or "*quarter*"] *sessions assembled, you are hereby required to raise the sum of within your constablewick, for which you are to make an equal rate within your said constablewick, and to levy the same in such manner as money for the relief of the poor is by law to be rated or levied; which said sum you are to pay unto me in thirty days' time from your receipt of this precept, or otherwise having had due notice thereof; the same being the proportion of your said constablewick for and towards the general county rate. And herein you are not to fail, on the peril that shall ensue thereof. Given under my hand the day of , in the year of our Lord* 18 .

J. B., High Constable.

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(3). Summons of high constable for not paying county rate to the treasurer (a).

County of } To J. B., High Constable of the hundred of , in the county of .

WHEREAS information and complaint have been made before us J. P. and L. S., two of her Majesty's justices of the peace in and for the said county, by A. B., gentleman, treasurer of the public stock of the said county, that you, the said J. B., have neglected and refused to pay to the said A. B. the sum of

(*a*) See the 55 Geo. III. c. 51, s. 12 (*ante*, 216).

£ , being the amount now due and owing from you to the public stock of the said county, and which said sum of £ has or ought to have been received and levied by you from the overseers of the poor of the respective parishes and townships within your said hundred of .

These are therefore to summon you, the said J. B., to appear before us or others of her Majesty's justices of the peace in and for the said county, at , in the said county, on the day of next, at the hour of in the forenoon, to answer to the said information and complaint, and to be further dealt with according to law. Given under our hands and seals the day of, &c.

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(4). Summons of overseers for not paying the county rate to high constable (a).

County of } To C. D. and E. H., Overseers of the Poor of the township [or *"parish"*] *of , in the said county.*

WHEREAS information and complaint have been made before me, J. P., one of her Majesty's justices of the peace in and for the said county, by J. B., high constable of the hundred of , in the said county, that you the said overseers of the poor of the said township [or *"parish"*] *of were in pursuance of his warrant, for that purpose to you directed, ordered and required to levy, collect, and pay to the said J. B. the sum of , within the space of days from the receipt* [or *"date"* as the case may be] *of the said warrant, being the proportion of your said township* [or *"parish"*] *for and towards the general county rate, and that you the said overseers* [*although you received the said warrant on, &c.*] *have refused and neglected, and do refuse to pay the same:*

These are therefore to summon you, the said overseers, to appear before me or others of her Majesty's justices of the peace in and for the said county, at , in the said county, on next, at the hour of in the forenoon, to answer to the said information and complaint, and to show cause why a warrant of distress should not issue forthwith to levy the said sum of upon your goods and chattels, according to the directions of the statute in such case made and provided. Given under my hand and seal the day of in the year of our Lord 18

J. P.

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(5). Warrant of distress thereon.

County of } To the High Constable of the hundred of , in the said county of

WHEREAS at the general [or *"quarter"*] *sessions of the peace, holden in and for the said county of , on, &c., a rate or assessment was duly made, pursuant to the statute made and passed in the fifty-fifth year of the reign of his late Majesty King George the Third, for the purpose therein in that behalf mentioned; and the township* [or *"parish"*] *of , in the said county, was thereby duly rated and assessed in the sum of £ of lawful money of Great Britain; and whereas by virtue of an order of her Majesty's justices of the peace of the said county, in their general* [or *"quarter"*] *sessions assembled, on, &c. a warrant was duly issued to you, the high constable of the hundred of , in the said county, ordering and requiring you to issue your warrant to the overseers of the poor of the said township* [or *"parish"*] *to levy, collect, and pay the said rate or assessment of £ to you, the said high constable, within the space of then next following, and which you were thereby directed to pay within the space of into the hands of the treasurer of the said county, to be applied and disposed of in the manner and for the purposes in the said warrant in that behalf mentioned; and whereas the said overseers have neglected and refused and still neglect and refuse to pay the same to you, the said high constable, and you have thereof made complaint to* [*me*] *J. P. Esquire, one of her Majesty's justices of the peace in and for the said county; and whereas C. D. and E. F. the overseers of the poor of the said township* [or *"parish"*] *having appeared before me, in pursuance of my summons for that purpose, have not showed to me any sufficient cause why the same should not be paid:*

(a) See the 55 Geo. III. c. 51, s. 12 (*ante*, 216).

County Treasurer.

These are therefore to require you forthwith to make distress of the goods and chattels of them the said overseers, and if within the space of days next after such distress by you taken, the sum of £ , together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you detain the said sum of £ , and also your reasonable charges of taking, keeping, and selling the said distress, rendering to them, the said overseers, the overplus on demand. Given under my hand and seal, at , this day of, &c.

J. P.

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(6) Notice of appeal against county rate.

See a form in *R.* v. *Westmoreland*, 10 *B. & Cres.* 228.

County Treasurer.

[11 Geo. II. c. 20; 12 Geo. II. c. 29; 55 Geo. III. c. 51.]

Treasurer how chosen.

To give a bond.

By the 12 Geo. II. c. 29, s. 6, the treasurers of counties shall be persons resident in the county or division, and shall be appointed by the justices at their general or quarter sessions; first giving sufficient security to be accountable for the money which shall be paid to them in pursuance of this act, (for levying of county rates), and to pay such sums as shall be ordered by the justices in sessions, and for the due and faithful execution of the trust reposed in them.

Appointment complete without bond.

This provision does not make the giving of the security a condition precedent to a person's becoming treasurer, or being responsible or accountable to the justices, but the appointment is complete without such security being given. (*R.* v. *Patteson*, 4 *B. & Adol.* 9; 1 *Nev. & M.* 612, S. C.)

What a breach of bond.

The condition of a bond, after reciting that the obligor had been nominated treasurer and receiver of the rates and assessments made for the county, upon his giving security to the clerk of the peace for the due and faithful execution of the trusts reposed in him according to the statute, was, that the obligor should, when he was thereto required by the justices of the peace assembled at quarter sessions, or the major part of them, or by any committee of the said magistrates duly appointed for that purpose by any order of the said court of quarter sessions now made or hereafter to be made, well and truly account for all sums of money received by him by reason or on account of his office, and also should faithfully perform all the trusts reposed in him by virtue of his said appointment; it was held, that by the condition of this bond the county treasurer was bound to account for monies received by him in discharge of duties imposed on him by acts of Parliament passed either prior or subsequently to the 12 Geo. II. c. 29, which required that the county treasurer should give sufficient security to be accountable for the money paid to him in pursuance of that act, and for the due and faithful execution of the trusts reposed in him, and that a breach of the condition was sufficiently assigned, which stated that the defendant while he was treasurer received divers sums of money, and that he was required by the justices at sessions to account, but did not do so, it being unnecessary to allege that he had been required by an order of the court of quarter sessions, the words in the condition of the bond, "by any order of the said court of quarter sessions now made or here-

after to be made," applying only to the appointment of a committee, and not to the requisition by the justices to account. (*Farr* v. *Hollis*, 9 *B. & Cres.* 315; 4 *M. & Ry.* 502, S. C.; and see the other points decided in this case, *tit.* "*Military Law*," *Militia, Vol. V.*)

The above case of *R.* v. *Patteson* also decided that the defendant, as long as he was an alderman and justice of the peace of the city of N., was not a person capable of being appointed county treasurer.

Cannot be a justice.

A *quo warranto* will not lie against a county treasurer to shew by what authority he holds the office, if he has been *de facto* elected by the justices in quarter sessions; nor will mandamus lie to the justices in sessions to make a new election of a county treasurer, on the ground that one of the justices who had voted at the election had not taken the qualification oath prescribed by stat. 18 Geo. II. c. 20, prior thereto, for the acts of the justice are not void, although he may be liable to penalties. (*R.* v. *Justices of Herefordshire*, 1 *Chitt. Rep.* 709; and see *Margate Pier Co.* v. *Hannam*, 3 *B. & Ald.* 266).

Quo warranto

Acts of, not void, though not duly qualified.

The 11 Geo. II. c. 20, s. 3, which requires his election to be certified into the Court of Queen's Bench, is repealed by the 53 Geo. III. c. 113, s. 1.

Election need not be certified.

By the 12 Geo. II. c. 29, s. 12, the justices at general or quarter sessions may continue the treasurer from time to time in his office, and remove him at their pleasure, and appoint another in his place; and may allow him a salary not exceeding 20*l.* a-year, to be paid out of the county rates. (See the 55 Geo. III. c. 51, s. 17, *infra*, as to his salary).

Continuance in his office and salary.

By sect. 7 & 8. And the treasurer shall keep books of entries of the several sums by him received and paid; and shall deliver in a true and exact account upon oath, if required, of his receipts and disbursements, distinguishing the particular uses to which the several sums have been applied, to the justices at every general or quarter sessions, and shall lay before them the proper vouchers for the same; which accounts and vouchers, after having been passed by the said justices, shall be deposited with the clerk of the peace, to be kept amongst the records, to be inspected by any of the justices without fee.

9. "And the discharge of the justices, by their order at their general or quarter sessions, shall be a sufficient release and discharge to such treasurer."

His discharge.

By the 55 Geo. III. c. 51, s. 17. "And whereas the allowance which the justices of the peace are authorized to make to the treasurer or treasurers for his or their care and pains in the execution of his or their office, stands limited by the before recited act made in the twelfth year of the reign of his Majesty King George the Second, to a sum not exceeding twenty pounds a year; and whereas such sum has been in some, and may be found in many cases inadequate to remunerate him or them for such care and pains; be it hereby further enacted, that so much of the said act as limits the said allowance to twenty pounds a year is hereby repealed; and that it shall and may be lawful for the said justices of the peace, at their respective general or quarter sessions, or the greater part of them then and there assembled, to allow to the treasurer or treasurers of their counties, and to every of them insisting on the same, such reasonable sum or sums of money for such purpose as aforesaid, as they in their discretion shall think fit, of which they are hereby empowered to direct the payment out of the monies arising by the rates of their respective counties: provided always, that no such augmentation of allowance shall be made at any such general or quarter sessions, unless application for such augmentation shall have been made by the said treasurer or treasurers, or the justices of the peace, at some previous general or quarter sessions assembled, and unless notice of the intention of taking the said augmentation into consideration shall have been advertised for three successive weeks in some newspaper usually circulating

His salary.

Notice to be advertised in some county newspaper for three succes-

County Treasurer.

Five weeks in the month preceding time fixed for considering same.

Treasurers to publish once in every year an abstract of their accounts.

in such county, in the month immediately preceding the time fixed for considering the same."

18. "That the said several treasurers of counties, or of divisions of counties, shall and they are hereby required, once in every year, to publish in some one of the newspapers usually circulating in the county or division of the county in which they respectively act, a true and accurate abstract of the account of their receipts and expenditures, under their several heads, for the year immediately preceding the publication of such abstract, signed by the justices of the peace who shall have audited the same, under a penalty of fifty pounds for every omission of such publication."

For the various duties and trusts of the county treasurers, see the titles throughout this work.

Courts.

As to proof of proceedings in, *see post, tit.* "*Evidence;*" as to the county court, *see ante,* "*County Court;* as to the court-baron, *see* "*Baron Court, Vol. I.;*" as to the court-leet, *see* "*Leet,*" *Vol. III.;* as to the sheriff's tourn, *see* "*Tourn,*" *Vol. VI.;* as to the court of sessions, *see* "*Sessions,*" *Vol. V.*

Where the word *courts* is used generally in a statute, it must be taken to mean the King's courts at Westminster. (*Gregory's case,* 6 *Rep.* 20, and *R.* v. *Crisp.,* 1 *B.* & *Ald.* 282).

Criminal Information.

See "Information," "Justices," Vol. III.

Credible Witnesses.

See post, tit. "Evidence."

Cruelty to Animals.

See "Cattle and Animals," Vol. I.

Customs.

The laws relating to the customs, so far as justices of the peace, constables, and other such officers are concerned therein, being considerably connected with the laws of excise, it is thought proper to refer this subject to the title "*Excise,*" where the whole will be more clearly comprehended under one view.

As to customs and usages in general, *see* "*Statutes,*" *Vol. V.*

As to the proof of custom and usage, *see post,* "*Evidence.*"

Custos Rotulorum.

[37 Hen. VIII. c. 1; 3 & 4 Edw. VI. c. 1; 1 Will. III. c. 21.]

Who is, and his office.

THE *custos rotulorum* is he that hath the keeping of the rolls or records of the sessions (*a*). He is always a justice of the peace and *quorum* in the county where he hath his office. He is a man, for the most part, especially picked out, either for wisdom, countenance, or credit. He is the principal *civil* officer in the county, as the *lord lieutenant* is the chief in *military* command. (4 *Bla. Com.* 272). His office is quite distinct from that of the lord lieutenant. He is considered rather in the character of a minister than a judge. (*Dick. Sess.* 31).

How appointed.

By stat. 37 Hen. VIII. c. 1, (which was altered by stat. 3 & 4 Edw. VI. c. 1, but restored by stat. 1 Will. III. c. 21), no person shall be appointed to the office of *custos rotulorum* but such as shall have a bill signed with the King's hand for the same; which bill signed shall be a sufficient warrant to the lord chancellor to make a commission, assigning and authorizing thereby the same person to be *custos rotulorum*, until the King hath by another bill with his own hand appointed one other person to have the same office by himself or his sufficient deputy, learned in the laws, and meet and able to supply the said office.

Removable at pleasure.

In pursuance whereof, the last clause in the commission of the peace is generally to this effect: "Lastly, we have assigned you the aforesaid keeper of the rolls of our peace in our said county, and therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined, as is aforesaid." (See further the late case of *Harding* v. *Pollock*, 6 *Bing.* 25).

Convening session.

Where the manner of holding a special session is prescribed by the statute which directs it to be holden, the precise requisitions of the statute must of course be obeyed. Where no such direction is to be found, as in the great majority of instances, the special session may be convened at the instance of the *custos rotulorum* of the county, of the clerk of the peace or his deputy, or of two justices. (*Dick. Sess.* 7; "*Sessions, Special and Petty*," *Vol. V.*)

A general session may be convened by any two justices within the jurisdiction, one being of the *quorum*, or by the *custos rotulorum* and any one justice, but not by the *custos rotulorum* alone. (*Lamb.* 375; "*Sessions*," *Vol. V.*)

Ought to attend the sessions.

The *custos rotulorum*, by virtue of his office, having the custody of the rolls of session, ought to attend there by himself or his deputy, who is the clerk of the peace. (*Crown Circuit Comp.* 34).

Appointment of clerk of peace.

He is directed by statute to appoint a sufficient person residing within the county, to execute the office of clerk of the peace by himself or sufficient deputy, such deputy being admitted by the *custos rotulorum* so often as the office of clerk of the peace shall be vacant. (37 Hen. VIII. c. 1, s. 3; and see the case of *Harding* v. *Pollock*, 6 *Bing.* 25, fully confirming the right of the *custos rotulorum* to appoint the clerk of the peace).

Sale of office of clerk of peace.

But he may not sell the said place directly or indirectly, under the penalty of losing his own office of *custos rotulorum*, and forfeiting double the value of what he shall have received, to be recovered by any common informer in the superior courts. (1 W. & M. st. 1, c. 21, s. 8.)

(*a*) Yet so far they remain by reputation of law in custody of all the justices, that a *certiorari* to remove proceedings is directed to all. (*Com. Dig. Justices* (D. 4).)

Cutlers.

[59 Geo. III. c. 7.]

59 Geo. 3, c. 7.

THE stat. 59 Geo. III. c. 7, after reciting that "whereas knives, forks, razors, scissors, shears, and other cutlery wares, edge tools, and hardware requiring a cutting edge, forged and formed of wrought steel, and iron and steel, have for many years been a great branch of trade in England; and such articles being esteemed in foreign countries for their superior quality, great quantities thereof have been sent to foreign markets: and whereas a practice prevails of casting or forming in a mould from cast iron, knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, and some of such articles are, by a chemical process, previous to the finishing and polishing thereof, made to resemble so nearly the like sort of articles wrought of steel, and iron and steel, as scarcely to be distinguishable from wrought steel, and iron and steel, even by persons skilled in the manufactory of cutlery, edge tools, and hardware;" enacts, sect. 1, "that from and after the passing of this act it shall be lawful for all and every person and persons who shall make, forge, form, or manufacture, or cause, direct, or procure to be made, forged, formed, or manufactured, by means of the hammer, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, of wrought steel, or of iron and steel, to mark, strike, stamp, grave, or impress, or cause, direct, or procure to be marked, struck, stamped, graved, or impressed, in or upon any part of every such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, so forged and formed by means of the hammer, of wrought steel, and of iron and steel, the figure or form of a hammer, at any time, and not at any other time except as hereinafter provided, after the forging, and previous to the same respectively being ground or polished, so as to denote that such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, are so formed by means of the hammer, of wrought steel, and iron and steel, and so as to distinguish the same articles from such articles cast or formed in a mould, or otherwise than by means of the hammer."

Where articles are formed by the hammer, manufacturers to have the privilege of marking them with the figure of a hammer.

2. "Provided that it shall be lawful for all and every person and persons who shall, on the passing of this act, have in his, her, or their custody or possession, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting ege, made, forged, formed, or manufactured by means of the hammer, of wrought steel, or of iron and steel, at any time within the space of six calendar months next after the passing of this act, to mark, strike, stamp, grave, or impress, or cause, direct, or procure to be marked, struck, stamped, graved, or impressed, in and upon any part of such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, so forged and formed by means of the hammer, of wrought steel, and of iron and steel, so in his, her, or their possession, the figure or form of a hammer, so as to denote that such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, were so formed by means of the hammer, of wrought steel, or of iron and steel, and so as to distinguish the same articles from such articles cast or formed in a mould, or otherwise than by means of the hammer."

Persons having manufactured articles in their possession empowered to mark the same with the figure of a hammer.

Sect. 3. "From and after the passing of this act it shall not be law-

Person casting

59 Geo. 3, c. 7.

cutlery wares, edge tools, and hardware requiring a cutting edge, to mark the same with the figure of a hammer, &c. or the words steel, shear steel, &c., or having in possession or selling, &c. such cast articles so marked.

Persons offending.

ful for any person or persons to cast, mark, strike, stamp, grave or impress, or cause, direct or procure to be cast, mark, struck, stamped, graved or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, or any other cutlery articles whatsoever, edge tools or hardware requiring a cutting edge, which shall be cast or formed in a mould, or formed otherwise than by means of the hammer, either at the time of casting or forming such articles in the mould, or otherwise than by means of the hammer, or subsequently thereto, and previous to the *bonâ fide* sale thereof to the user, the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto, nor to have in his, her, or their possession, for the purpose of sale, nor to sell, expose or offer to sale, or cause, direct or procure to be sold, exposed or offered to sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, which shall have been cast or formed in a mould, or otherwise than by means of the hammer, having marked or struck thereon the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto; and all and every person and persons who shall cast, mark, strike, stamp, grave or impress, or cause, direct or procure to be cast, marked, struck, stamped, graved or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, which shall have been cast or formed in a mould, or otherwise than by means of the hammer either at the time of casting or forming thereof, or subsequently thereto, and previous to the *bonâ fide* sale thereof to the user, the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto; or who shall have in his, her, or their possession for the purpose of sale, or who shall sell, expose, or offer to sale, or cause, direct, or procure to be sold, exposed, or offered to sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, which shall have been cast or formed in a mould, or otherwise than by means of the hammer, having marked or struck thereon the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto, shall, in all and every the cases aforesaid, forfeit all and every such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, having thereon the figure or form of a hammer, or any symbol or device resembling a hammer, or having any similitude thereto, together with the sum of 5*l.* for any quantity not exceeding one dozen of such articles so marked, struck, sold, or exposed to sale: and for any quantity of such articles exceeding one dozen, 5*l.* for every one dozen thereof; such sum and sums respectively to be levied, recovered, and applied as hereinafter directed."

Penalty.

No person to mark any knives &c. forged with the hammer, or cast in a mould, with any words which shall indicate the quality to be otherwise than the true quality; or have in his possession any such articles improperly marked.

Persons offending.

Sect. 4. "From and after the passing of this act it shall not be lawful for any person or persons to cast, mark, strike, stamp, grave or impress, or cause, direct or procure to be cast, marked, struck, stamped, graved or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or of iron and steel, or cast in a mould, either at the time of forging or casting such articles, or subsequently thereto, previous to the *bonâ fide* sale thereof to the user, any word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality thereof; nor to have in his, her, or their possession for the purpose of sale, nor to sell or expose, or offer to sale, or cause, direct, or procure to be sold, exposed or offered to sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hard-

59 Geo. 3, c. 7.

ware requiring a cutting edge, forged and formed with the hammer, of wrought steel, and iron and steel, or cast in a mould, having marked thereon any word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality thereof; and all and every person or persons who shall cast, mark, strike, stamp, grave or impress or cause or procure to be cast, marked, struck, stamped, graved or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, forged or formed with the hammer, of wrought steel, or iron and steel, or cast in a monld, either at the time of forging or casting, or subsequently thereto, previous to the *bonâ fide* sale thereof to the user, any word or words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality; or who shall have in his, her, or their possession for the purpose of sale, or shall sell, expose or offer to sale, or cause, direct, or procure to be sold, exposed or offered to sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or iron and steel, or cast in a mould, having thereon any words which shall or may denote or indicate the quality of such articles to be otherwise than the real and true quality thereof, shall, in all and every the cases aforesaid, forfeit all and every such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, being marked, possessed, sold, or exposed to sale, contrary to the directions of this act, together with the sum of 5*l.* for any quantity not exceeding one dozen of such articles so marked, sold or exposed to sale; and for any quantity of such articles exceeding one dozen, 5*l.* for every one dozen thereof; such sum and sums respectively to be levied, recovered and applied as hereinafter directed."

Penalty.

No person to cast, mark, &c. any articles with the words "London," or "London made" thereon, except made within the city of London or a certain distance thereof, nor to have in possession, sell, &c such articles.

Persons offending.

Sect. 5. "From and after the passing of this act it shall not be lawful for any person or persons to cast, mark, strike, stamp, grave or impress, or cause, direct, or procure to be cast, marked, struck, stamped, graved or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or of iron and steel, or cast in a mould, either at the time of forging or casting such articles, or subsequently thereto, previous to the *bonâ fide* sale thereof to the user, the word or words 'London,' 'London made,' or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved or impressed, shall have been manufactured within the city of London, or within twenty miles distance therefrom; nor to have in his, her, or their possession, for the purpose of sale, nor to sell, or expose or offer to sale, or cause, direct, or procure to be sold, exposed or offered to sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, forged and formed with the hammer of wrought steel, or iron and steel, or cast in a mould, having marked thereon the word or words 'London,' 'London made,' or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved or impressed, shall have been manufactured within the city of London, or within twenty miles distance therefrom; and all and every person or persons who shall cast, mark, strike, stamp, grave, or impress, or cause or procure to be cast, marked, struck, stamped, graved or impressed, in or upon any part of any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hardware requiring a cutting edge, forged or formed with the hammer, of wrought steel, or iron and steel, or cast in a mould, either at the time of forging or casting, or subse-

quently thereto, previous to the *bonâ fide* sale thereof to the user, the word or words 'London,' 'London made,' or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved or impressed, shall have been manufactured within the city of London, or within twenty miles distance therefrom; or who shall have in his, her, or their possession, for the purpose of sale, or shall sell, expose, or offer to sale, or cause, direct, or procure to be sold, exposed or offered to sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools, and hard ware requiring a cutting edge, forged and formed with the hammer, of wrought steel, or iron and steel, or cast in a mould, having thereon the word or words, 'London,' 'London made,' or any word or words having any similitude thereto, unless the articles so cast, marked, struck, stamped, graved or impressed, shall have been manufactured within the city of London, or within twenty miles distance therefrom, shall, in all and every the cases aforesaid, forfeit all and every such knives, knife blades, forks, razors, razor blades, scissors, shears, and other articles of cutlery, edge tools and hardware requiring a cutting edge, being marked, possessed, sold, or exposed to sale, contrary to the directions of this act, together with a sum of 10*l.* for any quantity not exceeding one dozen of such articles so marked, sold, or exposed to sale; and for any quantity of such articles exceeding one dozen, 10*l.* for every dozen thereof; such sum and sums respectively to be levied, recovered, and applied as hereinafter directed."

Penalty.

Sect. 6. "From and after the passing of this act, in case any person or persons shall have in his, her, or their possession, for the purpose of sale, or shall sell, expose, or offer for sale, or cause, direct, or procure to be sold or offered for sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, or any other cutlery articles whatsoever, edge tools and hardware requiring a cutting edge, formed with the hammer, or cast in a mould in a finished state, having marked thereon any word or words contrary to the directions of this act, shall, at or upon any information or complaint being laid or made against him, her, or them, prove satisfactorily, by the oath of himself or herself, or any other person, before one or more of his Majesty's justices of the peace, that such knives, knife blades, forks, razors, razor blades, scissors, shears, or any other cutlery articles whatsoever, edge tools, and hardware requiring a cutting edge, were purchased or came into the possession of him, her, or them, or were made, formed, cast, or manufactured before the passing of this act, then and in such case the person or persons so having the said articles in a finished state in his, her, or their possession, for the purpose of sale, or selling, exposing or offering the same for sale, or causing, directing, or procuring the same to be sold or offered for sale, shall not be liable to the pains and penalties aforesaid."

Proviso for persons having in their possession, selling, &c. articles marked contrary hereto before the passing of this act.

Sect. 7. "From and after the passing of this act, in case any person or persons shall have in his, her, or their possession, for the purpose of sale, or shall sell, expose, or offer for sale, or cause, direct, or procure to be sold or offered for sale, any knives, knife blades, forks, razors, razor blades, scissors, shears, or any other cutlery articles whatsoever, edge tools, or hardware requiring a cutting edge, cast or formed in a mould, or forged and formed with the hammer, which shall not have been made, formed, cast, or manufactured before the passing of this act, having marked thereon the figure or form of a hammer, or any word or words contrary to the directions of this act, shall, at or before any information or complaint shall be laid or made against him, her, or them, prove satisfactorily by the oath of himself, herself, or themselves, before one or more of his Majesty's justices of the peace, that he, she, or they purchased such articles, with the figure, words, or marks thereon respectively, without knowing at the time of such purchase that the same were articles marked contrary to the direction of this act, and

Proviso for persons having in their possession articles marked contrary to act, who shall, before information laid, prove upon oath the purchase without knowing that the articles were improperly marked.

50 Geo. 3. c. 7.

shall discover to any two or more justices of the peace the name or names of the person or persons of whom he or she purchased the same, so that such person or persons shall be prosecuted to conviction for the same, then and in such case the person or persons who shall have in his, her, or their possession any of such articles as aforesaid, for the purposes aforesaid, shall not be liable to the pains and penalties aforesaid, but shall be entitled to two third parts of the penalty as other informers."

Two justices may determine offence.

Sect. 8. "It shall and may be lawful to and for any two or more of his Majesty's justices of the peace for the county, city, or place where the offender or offenders shall reside, or where the offence shall be committed, to hear and determine any offence or offences against this act; and all such justices are hereby authorized and required, upon any information exhibited or complaint made in that behalf, to summon the party or parties accused, and the witnesses on each side, and to examine into the matter of such complaint; and upon due proof thereof, either by confession of the party complained of, or by the oath of one or more credible witness or witnesses, to give judgment or sentence for the pecuniary penalty, with costs, to be allowed by such justices, and to award and issue out their warrant under their hands and seals for the levying such penalty and costs on the goods and chattels of the offender or offenders, and to cause sale to be made thereof in case such goods and chattels shall not be redeemed within five days inclusive of the day of the seizure, rendering the overplus (if any), after defraying the expenses of such distress and sale, to the person or persons whose goods and chattels shall have been so distrained and sold; and for want of a sufficient distress, such justices shall and may commit such offender or offenders to his Majesty's gaol for the county, city, or place, where such offence shall be committed as aforesaid, there to remain for any time not exceeding three calendar months, unless payment shall be sooner made of the said penalty and costs."

Penalty recovered by distress.

If no distress, imprisonment.

Appeal.

Sect. 9. "If any person or persons shall think himself, herself, or themselves aggrieved by the judgment of such justices, he, she, or they may (upon giving security with a sufficient surety to the amount of the value of such penalty or penalties and costs, together with such further costs as shall be awarded in case such judgment shall be affirmed) appeal to the next general quarter sessions of the peace for the county, city, or place where such conviction shall be made; and the justices at such sessions are hereby empowered to summon and examine witnesses on oath, and to hear and finally determine the matter of the said appeal, and to award such costs as the said court shall think reasonable to the party in whose favour such appeal shall be determined."

Costs.

Mitigation of penalties

Sect. 10. "It shall be lawful for any justices of the peace, before whom any information may be laid, and also for the said justices in quarter sessions assembled, (if they respectively should think fit), to mitigate the said penalties in such manner as to them shall seem expedient; provided that such penalties shall in no case be mitigated to less than one half, or where such penalties shall be less than the sum of 50*l.* to less than 25*l.*"

Proceedings not quashed for want of form only.

Sect. 11. "No conviction made upon any offence or offences in this act mentioned or created, shall be set aside in or by any court whatsoever for want of form, or through the mistake of any fact, circumstance, or other matter whatsoever; provided that the material facts alleged in such conviction, and upon which the same shall be grounded, be proved to the satisfaction of the said court; any law, statute, or custom to the contrary notwithstanding."

Conviction

Sect. 12. "A conviction in the form and to the effect following, (*mutatis mutandis*), as the case may require, shall be good and effectual to all intents and purposes whatsoever, without further stating the case, or the facts or evidence in any particular manner; (that is to say):

59 Geo. 3, c. 7.

Form of conviction.

"*Be it remembered, that on the day of in the year of our Lord at in the county of , A. B. came before us C. D. and E. F. of his Majesty's justices of the peace for the said county,* ["*city,*" or "*place,*" as the case may be], *and informed us that G. H. of on the day of now last past, at in the said county,* ["*city*" or "*place,*" as the case may be; here set forth the fact for which the information is laid]. *Whereupon the said G. H., after being duly summoned to answer the charges, appeared before us on the at in the said county,* ["*city,*" or "*place*"], *and having heard the charge contained in the said information, declared he was not guilty of the said offence,* [or, as the case may happen to be, "*did not appear before us, pursuant to the said summons,*" or, "*did neglect and refuse to make any defence against the said charge*"], *but the same being fully proved before us, upon the oath of J. K. a credible witness,* [or as the case may happen to be], *acknowledged and voluntarily confessed the same to be true; and it manifestly appeared to us, that the said G. H. is guilty of the offence charged upon him in the said information; we do therefore hereby convict him of the offence aforesaid, and do declare and adjudge that he the said G. H. hath forfeited the said* [here describe the articles formed, cast, sold, or offered to sale, not being marked according to the directions of this act,] *together with the sum of of lawful money of Great Britain, for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given under our hands and seals the day of .*"

Compelling the attendance of witnesses

Sect. 13. "If any person shall be summoned as a witness to give evidence before such justices of the peace, touching any of the matters relative to this act, either on the part of the informer or of the person or persons accused, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his, her, or their neglect or refusal, to be allowed of by such justices of the peace, or appearing shall refuse to be examined on oath and give evidence before such justices, then every such person shall forfeit for every such offence the sum of 10*l.* to be levied and paid in such manner and by such means as are herein directed as to other penalties."

Justice by warrant may seize knives &c liable to be forfeited.

Sect. 14. "It shall and may be lawful to and for any justice of the peace of the county, city, or place where the offence is committed, or where the offender or offenders reside, by warrant under his hand and seal, to cause any such knives, knife blades, forks, razors, razor blades, scissors, shears, or any other cutlery articles whatsoever, edge tools, or hardware requiring a cutting edge, as shall be liable to be forfeited by virtue of this act, to be seized, and the same when seized to keep in safe custody, for the purpose of producing the same in evidence upon any prosecution to be instituted or carried on for the pecuniary penalties incurred in respect thereof; and when and as soon as the further production thereof in evidence shall become unnecessary, then the same shall, by order of such justices, be destroyed, or disposed of in any manner as the court before which such articles shall be produced may direct."

Produced in evidence, and then court may dispose thereof.

Limitation of informations.

Sect. 15. "No information shall be exhibited for any of the offences aforesaid, unless within the space of six calendar months after the commission of such offences respectively."

Application of penalties.

Sect. 16. "One third part of the pecuniary penalties to be recovered as aforesaid shall be paid and payable to the poor of the parish, township, or place where the offence shall be committed, and the other two third parts of such penalties to the person or persons who shall inform of any of the offences aforesaid."

Parishioners may be witnesses.

Sect. 17. "In all informations, complaints, and other proceedings, in pursuance of this act, or in relation to any matter or thing herein contained, any inhabitant of the parish, township, or place in which any offence or offences shall be committed, contrary to the true intent and meaning of this act, shall be admitted to give evidence, and shall be deemed competent witnesses, notwithstanding his, her, or their

59 Geo. 3, c. 7.

being an inhabitant or inhabitants of the parish, township, or place, wherein any such offence or offences shall be supposed to have been committed."

Persons disclosing by whose order any thing punishable under act was done, not liable to penalty.

Sect. 18. "In case any person or persons who shall be liable to any of the penalties aforesaid, by reason of any thing done by him, her, or them, under the order, direction, or procurement of any other person or persons, shall, before any information or complaint shall be laid or made against him, her, or them, discover to any two or more justices the name or names of the person or persons by whose order, direction, or procurement he, she, or they shall have done such act, which shall have made him, her, or them liable to any of the penalties, so that the person or persons, by whose order, direction, or procurement, he, she, or they shall have done such act, shall be prosecuted to conviction for the same; then and in such case such person or persons who shall give such information, or make such complaint, shall not be liable to the pains and penalties aforesaid, but shall be entitled to two third parts of the penalty as other informers."

Servants in.

See further as to cutlers and artificers in the cutlery trade, tit. "*Servants*," *Vol. V.*

Cyder. *See tit.* "*Alehouses*," *Vol. I.; and post, tit.* "*Excise*."

Damaging Goods, &c. *See* "*Malicious Injuries to Property*," *Vol. V.*

Dancing. *See post,* "*Disorderly Houses;*" "*Alehouse, Vol. I.*

Day. *See* "*Time*," *Vol. VI.*

Dead Animals. *Description of, in Indictment, see* "*Indictment*," *Vol. III.*

Dead Bodies. *See* "*Bodies*," *Burial of, in Church-yard; and* "*Church*," *Vol. I.*

Deaf and Dumb, *Examination of Witness who is, see post, title* "*Evidence;*" *Arraignment of Deaf and Dumb Prisoner, see* "*Mute*," *Vol. V.*

Death, *Sentence of, see* "*Judgment*," *Vol. III., post;* "*Felony;*" *Proof of, see post,* "*Evidence.*"

Death-bed Declarations. *Evidence of, see post,* "*Evidence.*"

Debenture, *for Money, or Payment of Money, Stealing of, see "Larceny," Vol. III.; In Customs and Excise Matters, Forgery of, see "Forgery," Vol. III.*

Debtors. *See "Bankrupt," Vol. I.; "Insolvent Debtors," Vol. III.; Treatment of, &c. in Gaols, see "Gaol," Vol. III.*

Deceit. *See Vol. I., "Cheat."*

Decency. *See "Bathing," Vol. I.; "Lewdness," Vol. III.*

Declarations *of a Party, how far Evidence, see post, "Evidence;" of a Dying Person, how far Evidence, see id.*

Decoy. *See "Game," Vol. III.*

Decree. *Proof of, see post, "Evidence."*

Deed. *Proof of, see post, "Evidence."*

Deed Enrolled. *Proof of, see post, "Evidence."*

Deed. *Stealing of, see "Larceny," Vol. III.*

Deed. *Forgery of, see "Forgery," Vol. III.*

Deer. *See "Game," Vol. III.*

Defamation. *See "Libel," Vol. III.; "Slander," Vol. V.*

Defects *in Indictment, when cured by Verdict, see "Indictment," Vol. III.; in Conviction, when cured, "Conviction," Vol. I.; in Commitment, see "Commitment," Vol. I.*

Defence. *Self-Defence, see ante, "Assault," Vol. I.; "Homicide," Vol. III.; Mode of Defence at Sessions, see "Sessions," Vol. V.; "Trial," Vol. VI.; Mode of, on hearing of Conviction, "Conviction," Vol. I.*

Demurrer.

Defendant. *When a Co-Defendant a competent Witness, see post, "Evidence."*

Degree. *Addition of, in Indictment, see "Indictment," Vol. III.; in Conviction, see "Conviction," Vol. I.*

Demanding Money, &c. with Menaces. *See "Threats," Vol. VI.*

Demurrer.

A DEMURRER (from *demorari*) signifies an abiding in point of law, upon which the defendant joins issue, allowing the *facts* to be true as laid in the indictment. (*Wood's Inst.* b. 4, c. 5).

In criminal cases, *not capital*, if the defendant demur to an indictment, &c., whether in abatement or otherwise, the court will not give judgment against him to answer over, but final judgment; (2 *Hawk.* c. 31, s. 7; *R.* v. *Gibson*, 8 *East*, 112); but in *capital* cases this seems otherwise. (*See* 2 *Hawk.* by *Curwood*, c. 31, s. 5).

Demurrers, however, to indictments are seldom used; since the same advantages may be taken from a plea of not guilty; or oftentimes afterwards in arrest of judgment, when the verdict has established the fact. (4 *Bla. Com.* 334). See the stat. of 7 Geo. IV. c. 64, s. 20, as to what defects are cured after verdict, and must be demurred to, if defendant intends taking advantage of them, "*Indictment*," *Vol. III.*

As to amendments, *see* "*Amendment*," *Vol. I.*

As to demurrers to evidence, *post*, "*Evidence.*"

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(1). Demurrer to an indictment or information.

And the said C. D., in his own proper person, cometh into court here, and having heard the said indictment [or "*information*"] *read, saith that the said indictment* [or "*information*"] *and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that he the said C. D. is not bound by the law of the land to answer the same: and this he is ready to verify. Wherefore, for want of a sufficient indictment* [or "*information*"] *in this behalf, the said C. D. prays judgment and that by the court here he may be dismissed and discharged from the said premises in the said indictment* [or "*information*"] *specified.*

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(2). Joinder.

AND A. B., who prosecutes for our said Lady the Queen in this behalf, saith, that the said indictment, and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law to compel the said C. D. to answer the same; and the said A. B., who prosecutes as aforesaid, is ready to verify and prove the same, as the court here shall direct and award. Wherefore, inasmuch as the said C. D. hath not answered to the said indictment, nor hitherto in any manner denied the same, the said A. B., for our said Lady the Queen, prays judgment, and that the said C. D. may be convicted of the premises in the said indictment specified.

The like form, *mutatis mutandis*, may be adopted in the case of informations, and of indictments in the Court of Queen's Bench.

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(3). Demurrer to a plea in bar.

AND A. B., who prosecutes for our said Lady the Queen in this behalf, as to the said plea of the said C. D. by him above pleaded, saith, that the same and the matters therein contained, in manner and form as the same are above

pleaded and set forth, are not sufficient in law to bar or preclude our said Lady the Queen from prosecuting the said indictment against him the said C. D.; and that our said Lady the Queen is not bound by the law of the land to answer the same: and this he the said A. B., who prosecutes as aforesaid, is ready to verify. Wherefore, for want of a sufficient plea in this behalf, the said A. B., for our said Lady the Queen, prays judgment, and that the said C. D. may be convicted of the premises in the said indictment specified.

The like forms, *mutatis mutandis*, may be adopted in the case of informations and of indictments in the Court of Queen's Bench. A demurrer to a plea in abatement is in the same form, except that it concludes with praying *judgment, and that the said indictment may be adjudged good, and that the said C. D. may further answer thereto, &c.*

(4). Joinder.

AND the said C. D. saith, that his said plea by him above pleaded, and the matter therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude our said Lady the Queen from prosecuting the said indictment against him the said C. D.; and the said C. D. is ready to verify and prove the same, as the said court here shall direct and award. Wherefore, inasmuch as the said A. B. for our said Lady the Queen hath not answered the said plea, nor hitherto in any manner denied the same, the said C. D. prays judgment, and that by the court here he may be dismissed and discharged from the said premises in the said indictment specified.

The joinder is the same, if the demurrer be to a plea in abatement, except that it concludes with praying *judgment, and that the said indictment may be quashed, &c.*

Deodand.

What it is.

DEODAND is, when any moveable thing inanimate, or beast animate, doth move to or cause the untimely death of any reasonable creature, by mischance, without the will or fault of himself, or any person. (3 *Inst.* 57). Therefore, a finding of a deodand in an inquisition for manslaughter is bad. (*Reg.* v. *Polward*, 1 *G. & D.* 211).

By deodand is meant whatever personal chattel is the immediate occasion of the death of any reasonable creature, which is forfeited to the King, to be applied to pious uses, and distributed in alms by his high almoner, though formerly destined to a more superstitious purpose. It seems to have been originally designed, in the blind days of popery, as an expiation for the souls of such as were snatched away by sudden death, and for that purpose ought properly to have been given to Holy Church, in the same manner as the apparel of a stranger, who was found dead, was applied to purchase masses for the good of his soul. And this may account for that rule of law, that no deodand is due, where an infant under the age of discretion is killed by a fall *from* a cart, or horse, or the like, not being in motion; whereas if an adult person falls from thence and is killed, the thing is certainly forfeited. (1 *Bla. Com.* 300).

This forfeiture is still part of the casual revenue of the crown, unless where lords of franchises are entitled to it by *grant;* for no man can *prescribe* to it, or to the goods of self-murderers or other felons, or of outlaws, happening within his royalty. (*Fost.* 265).

Infant killed.

It seems clearly settled, contrary to the former opinions, that a horse, or the like, killing an *infant* within the age of discretion, is as much forfeited as if he were of age. (1 *Hawk.* c. 26, s. 4).

Things fixed to the freehold.

Also it was anciently holden, that things *fixed to a freehold*, as the wheel of a mill, or a bell hanging in the steeple, may be deodands; but by the later resolutions they cannot, unless they were severed before the accident happened. (1 *Hawk.* c. 26, s. 5).

Deodand.

Falling from the shafts of a waggon.

If a man riding on the shafts of a waggon fall to the ground and break his neck, the horses and waggon only are forfeited, and not the loading, because it *no way* contributed to his death; for which reason, where a thing not in motion causes a man's death, that part thereof *only* which is the immediate cause is forfeited. As where one climbing upon the wheel of a cart while it stands still, falls from it, and dies of the fall, the wheel only is forfeited. But if he had been killed by a bruise from one of the wheels being in motion, the loading also would have been forfeited, because the weight thereof made the hurt thereof the greater. And it is a general rule, that wherever the thing which is the occasion of a man's death is in motion at the time, not only that part thereof which immediately wounds him, but all things which move together with it, and help to make the wound more dangerous, *are forfeited also.* (*Id.* s. 6). Thus, a cart met a loaded waggon upon the road, and the cart endeavouring to pass by the waggon was driven up a high bank and overturned, and threw a person that was in the cart just before the wheels of the waggon, and the waggon ran over him and killed him; it was resolved in this case that the cart, waggon, loading, and all the horses were deodands, because they all moved to the death. (*Lord of the Manor of Hampstead's case*, 1 *Salk.* 220). And see *Reg.* v. *Brownlow*, 11 *Ad. & Ell.* 119, and the cases there cited).

Accidents out of common law jurisdiction

No deodands are due for accidents which happen out of the jurisdiction of the common law, as where a man falls from a ship in salt water and is drowned; (1 *Hawk.* c. 26, s. 6); but if a man fall from a ship or boat in fresh water and be drowned, the vessel is forfeited. (*Id.*; 1 *Com.* 302).

Year and day.

If the party wounded die not of his wound within a year and day after he received it, there shall be nothing forfeited; for the law doth not look on such a wound as the cause of a man's death, after which he lives so long. But if the party die within that time, the forfeiture shall have relation to the wound given, and cannot be saved by any alienation or other act whatsoever in the mean time. (1 *Hawk.* c. 26, s. 7).

Must be first found by the coroner's inquest.

However, nothing can be forfeited as a deodand, nor seized as such, till it be found by the coroner's inquest to have caused a man's death. But after such inquisition, the sheriff is answerable for the value of it, and may levy the same on the town where it fell, and therefore the inquest ought to find the value of it. (*Id.* s. 8).

And if the coroner omits his duty in this case, the inquisition may be made by the commissioners of the gaol delivery, over and terminer, or of the peace. (1 *Hale*, 419).

Mitigation of forfeitures.

After all, as this forfeiture seemeth to have been originally founded rather in the superstition of an age of ignorance than in the principles of sound reason and policy, it has not of late years met with great countenance in Westminster-hall; and when juries have taken upon them to use a judgment of discretion, not strictly within their province, for reducing the *quantum* of the forfeiture, the Court of King's Bench have refused to interpose in favour of the crown or lord of the franchise. In the case of *R.* v. *Rolfe*, coroner of Kent, H. 5 Geo. II., the coroner's inquest found that a man sitting on his waggon accidentally fell to the ground, and that the horses drawing the waggon forward one of the fore-wheels crushed his head, of which he instantly died, and then concluded that only the wheel, on which they set a small value, moved to his death. A motion was made, in behalf of Mr. Monpesson, lord of the franchise, for quashing this inquisition, upon affidavits tending to shew that the cart and horses were equally instrumental, which indeed the finding of the jury did sufficiently imply. But the court was very clear that neither this court nor the coroner can oblige the jury to conclude otherwise than they have done, and would not suffer the affidavits for quashing the inquisition to be read. A like cause came on, M. 29 Geo. II., *R.* v. *Drew*, coroner of Middlesex. The coroner's jury, upon view of the body of a person killed by the like accident, found that

only one wheel of the waggon moved to the death. The court, on motion, in behalf of the lord of the franchise, granted a rule for shewing cause why the inquisition should not be quashed for this misbehaviour of the jury. On the day for shewing cause, the counsel for the lord of the franchise informed the court that upon looking into precedents he was satisfied he could not support the rule; and thereupon it was discharged. The case of *R.* v. *Rolfe* was mentioned on this occasion, and greatly relied on. (2 *Bac. Abr.* 294; *Fost.* 266).

These forfeitures are now generally mitigated to something very trifling.

By the 3 & 4 Will. IV. c. 99, s. 29 (*ante*, 41), coroners are to make out an account of deodands and transmit the same to the treasury and to the commissioners of audit, and the same are to be certified and estreated into the exchequer.

3 & 4 Will 4, c. 99. Account of deodands.

See further as to deodands, *tit.* "*Coroner*," *ante*, 40.

Depositions. *See* "*Coroners*," *ante*, 32; *post*, "*Examination*;" *post*, "*Evidence*."

Deputy. *See* "*Constable*," *Vol. I.*; "*Coroner*," *ante*, 28; "*Justices*," *Vol. III.*

Deserter. *See* "*Military Law*," *Vol. V.*

Deserting Premises by Tenant, *Proceedings before Justices in case of, see tit.* "*Landlord and Tenant*," *Vol. III.*

Destroying Property, &c. *See* "*Malicious Injuries to Property*," *Vol. V.*

Detainer. *See* "*Forcible Entry and Detainer*," *Vol. III*; *see also* "*Arrest*," "*Commitment*," *Vol. I.*

Dice. *See ante*, "*Cards and Dice*," *Vol. I.*; "*Gaming*," *Vol. III.*

Discontinuance, *not amendable*, "*Amendment*," *Vol. I.*

Disobeying Order of Justices. *See* "*Order*," *Vol. V.*

Disorderly House.

[25 Geo. II. c. 36; 21 Geo. III. c. 49; 58 Geo. III. c. 70, s. 7.]

As to gaming-houses, *see* "*Gaming*," *Vol. II.*

25 Geo. 2, c. 36.

By the 25 Geo. II. c. 36, intituled "*An Act for the better preventing Thefts and Robberies, and for regulating Places of Public Entertainment, and punishing Persons keeping Disorderly Houses*," (made perpetual by 28 Geo. II. c. 18), sect. 1 made it an offence to advertise a reward for the return of goods stolen or lost, &c.: the enactment, however, is repealed by the 7 & 8 Geo. IV. c. 28, and re-enacted in other terms by the 7 & 8 Geo. IV. c. 29, s. 59. (For which see "*Larceny*," *Vol III.*)

Advertising reward for recovery of stolen goods.

In London and Westminster or within twenty miles thereof

Sect. 2, reciting, "the multitude of places of entertainment for the lower sort of people is another great cause of thefts and robberies, as they are thereby tempted to spend their small substance in riotous pleasures, and in consequence are put on unlawful methods of supplying their wants, and renewing their pleasures: in order therefore to prevent the said temptation to thefts and robberies, and to correct as far as may be the habit of idleness, which is become too general over the whole kingdom, and is productive of much mischief and inconvenience;" it is enacted, "that from and after the 1st day of December, 1752, *any* house, room, garden or other place *kept for public dancing, music or other public entertainment of the like kind, in the cities of London and Westminster, or within twenty miles thereof*, without a license had for that purpose from the last preceding Michaelmas quarter sessions of the peace, to be holden for the county, city, riding, liberty, or division in which such house, room, garden or other place is situate, (who are hereby authorized and empowered to grant such licenses as they in their discretion shall think proper), signified under the hands and seals of four or more of the justices there assembled, shall be deemed a disorderly house or place: and every such license shall be signed and sealed by the said justices in open court, and afterwards be publicly read by the clerk of the peace, together with the names of the justices subscribing the same; and no such license shall be granted at any adjourned sessions; nor shall any fee or reward be taken for any such license: and it shall and may be lawful to and for any constable, or other person, being thereunto authorized, by warrant under the hand and seal of one or more of his Majesty's justices of the peace of the county, city, riding, division or liberty where such house or place shall be situate, to enter such house or place, and to seize every person who shall be found therein, in order that they may be dealt with according to law; and every person keeping such house, room, garden or other place, without such license as aforesaid, shall forfeit the sum of 100*l.* to such person as will sue for the same; and be otherwise punishable as the law directs in cases of disorderly houses." [For the law and cases on this enactment, see 252, *post*].

Unlicensed places of entertainment deemed disorderly houses.

Constables may seize persons found there

Keeper to forfeit 100*l*

Licensed places to have an inscription over them,

Sect. 3. Provided always, "that in order to give public notice what places are licensed pursuant to this act, there shall be affixed and kept up in some notorious place over the door or entrance of every such house, room, garden or other place, kept for any of the said purposes, and so licensed as aforesaid, an inscription in large capital letters, in the words following, *viz.* LICENSED PURSUANT TO ACT OF PARLIAMENT OF THE TWENTY-FIFTH OF KING GEORGE THE SECOND; and that no such house, room, garden or other place, kept for any of the said purposes, although licensed as aforesaid, shall be open for any of the said purposes before the hour of five in the afternoon; and that the affixing and keeping up

and not to open before five in the evening.

of such inscription as aforesaid, and the said limitation or restriction in point of time, shall be inserted in, and made conditions of, every such license; and in case of any breach of either of the said conditions such license shall be forfeited, and shall be revoked by the justices of peace in their next general or quarter sessions, and shall not be renewed, nor shall any new license be granted to the same person or persons, or any other person on his or their or any of their behalf, or for their use or benefit, directly or indirectly, for keeping any such house, room, garden or other place, for any of the purposes aforesaid."

25 Geo. 2, c. 36.

On breach of either of the conditions, the license to be revoked.

Sect. 4 provides, "that nothing in this act contained shall extend, or be construed to extend, to the theatres royal in Drury Lane and Covent Garden, or the theatre commonly called the King's Theatre in the Haymarket, or any of them; nor to such performances and public entertainments as are or shall be lawfully exercised and carried on under or by virtue of letters-patent, or license of the crown, or the license of the lord chamberlain of his Majesty's household; any thing herein contained notwithstanding."

Places licensed by the crown, or the lord chamberlain, excepted.

Sect. 5. And "in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses," be it enacted, "that if any two inhabitants of any parish or place, paying scot and bearing lot therein, do give notice in writing to any constable (or other peace-officer of the like nature, where there is no constable) of such parish or place, of any person keeping a bawdy-house, gaming-house or any other disorderly house, in such parish or place, the constable, or such officer as aforesaid, so receiving such notice, shall forthwith go with such inhabitants to one of his Majesty's justices of the peace of the county, city, riding, division or liberty in which such parish or place does lie; and shall, upon such inhabitants making oath before such justice, that they do believe the contents of such notice to be true, and entering into a recognizance in the penal sum of 20*l.* each, to give or produce material evidence against such person for such offence, enter into a recognizance in the penal sum of 30*l.*, to prosecute with effect such person for such offence at the next general or quarter sessions of the peace, or at the next assizes to be holden for the county in which such parish or place does lie, as to the said justice shall seem meet; and such constable or other officer shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace of the county, city, riding, division or liberty where the offence shall have been committed, and shall be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of 10*l.* to each of such inhabitants; and in case such overseers shall neglect or refuse to pay to such constable or other officer such expenses of the prosecution as aforesaid, or shall neglect or refuse to pay, upon demand, the said sums of 10*l.* and 10*l.*, such overseers, and each of them, shall forfeit to the person entitled to the same double the sum so refused or neglected to be paid."

Constable's duty upon notice of persons keeping a bawdy-house, gaming house, &c.

The charges of prosecution,

and 10*l* on conviction to each of the two inhabitants, to be paid by the overseers, on penalty of forfeiting double.

Sect. 6. Provided always, "that upon such constable or other officer entering into such recognizance to prosecute as aforesaid, the said justice of the peace shall forthwith make out his warrant to bring the person so accused of keeping a bawdy-house, gaming-house or other disorderly house, before him, and shall bind him or her over to appear at such general or quarter session or assizes, there to answer to such bill of indictment as shall be found against him or her for such offence; and such justice shall and may, if in his discretion he thinks fit, likewise demand and take security for such person's good behaviour in the mean time, and until such indictment shall be found, heard, and determined, or be returned by the grand jury not to be a true bill."

Persons keeping bawdy houses, &c. to be bound over.

The 58 Geo. III. c. 70, s. 7, after reciting the above provision of 25 Geo. II. c. 36, s. 5, and that it is expedient, that when any two inhabi-

58 Geo 3, c. 70 Notices directed by 25 Geo. 2, c. 36,

58 Geo. 3, c. 70.

to be given to constables in certain cases, to be given also to the overseers of the poor, who are to prosecute.

tants of any parish or place, paying scot and bearing lot therein, shall give notice in writing to any constable of such parish or place, of any person keeping a bawdy-house, gaming-house or any other disorderly house in such parish or place, that the overseers of the poor of such parish or place shall have notice thereof, it is enacted, "that a copy of the notice, (see form, *post*, No. 2), which shall be given to such constable shall also be served on or left at the place of abode of the overseers of the poor of such parish or place, or one of them, and such overseers or overseer of the poor shall be summoned or have reasonable notice to attend before such justice of the peace before whom such constable shall have notice to attend; and if such overseers or overseer of the poor shall then and there enter into such recognizance to prosecute such offender as the constable is in and by the said act required to enter into, then it shall not be necessary for, nor shall such constable be required to enter into such recognizance; but if such overseers or overseer of the poor shall neglect to attend such justice on having such notice, or shall attend and shall decline or refuse to enter into such recognizance to prosecute, then such constable shall enter into the same, and shall prosecute, and shall be entitled to his expenses, to be allowed as in and by the said act is directed."

25 Geo. 2, c. 36.

Penalty for neglect.

By the 25 Geo. II. c. 36, s. 7, it is provided also, "that if any such constable shall neglect or refuse, upon such notice, to go before any justice of the peace, or to enter into such recognizance, or shall be wilfully negligent in carrying on the said prosecution, he shall for every such offence forfeit the sum of 20*l.* to each of such inhabitants so giving notice as aforesaid."

Who deemed keeper of bawdy-house, &c.

Sect. 8, reciting, that "by reason of the many subtle and crafty contrivances of persons keeping bawdy-houses, gaming-houses or other disorderly houses, it is difficult to prove who is the real owner or keeper thereof, by which means many notorious offenders have escaped punishment," enacts, "that any person who shall at any time hereafter appear, act, or behave him or herself as master or mistress, or as the person having the care, government or management of any bawdy-house, gaming-house or other disorderly house, shall be deemed and taken to be the keeper thereof, and shall be liable to be prosecuted and punished as such, notwithstanding he or she shall not in fact be the real owner or keeper thereof."

Inhabitants, &c. witnesses.

Sect. 9. "Upon any such prosecution against any person for keeping a bawdy-house, gaming-house or other disorderly house, any person may give evidence against the defendant or on behalf of the defendant in such prosecution, notwithstanding his or her being an inhabitant or parishioner of the said parish or place, or having entered into such recognizance as aforesaid."

No *certiorari*.

Sect. 10. "No indictment which shall at any time after the said 1st day of June be preferred against any person for keeping a bawdy-house, gaming-house or other disorderly house, shall be removed by any writ of *certiorari* into any other court; but such indictment shall be heard, tried and finally determined, at the same general or quarter session or assizes, where such indictment shall have been preferred, (unless the court shall think proper, upon cause shewn, to adjourn the same), any such writ or allowance thereof notwithstanding."

Sect. 11 relates to the costs of prosecuting for felony, but is repealed by the 7 Geo. IV. c. 64, *ante*, 172.

Sect. 12 relates to proceedings against vagrants, as to which see now the 5 Geo. IV. c. 83, "*Vagrants*," *Vol. VI.*

Recovering of forfeitures.

Sect. 13. "Any person entitled to any of the forfeitures by this act imposed, may sue for the same by action of debt, in any of his Majesty's courts of record at Westminster, in which it shall be sufficient to declare, that the defendant is indebted to the plaintiff in the sum of , being forfeited by an act, intituled, 'An Act for the better preventing Thefts and Robberies, and for regulating Places of Pub-

lic Entertainment, and punishing Persons keeping disorderly Houses;' and the plaintiff, if he recover in any such action, shall have his full costs."

21 Geo. 3, c. 49.

Sect. 14. "No action shall be brought by virtue of this act, unless the same shall be commenced within the space of six calendar months after the offence committed."

Limitations of actions.

Sect. 15. "This act is to remain in force for three years" But the 28 Geo. II. c. 19, s. 1, makes it perpetual.

Continuance of act

By stat. 21 Geo. III. c. 49, intituled "*An Act for preventing certain Abuses and Profanations on the Lord's Day* (*a*) *called Sunday*," reciting, "Whereas certain houses, rooms, or places, within the cities of London or Westminster, or in the neighbourhood thereof, have of late frequently been opened for public entertainment or amusement upon the evening of the Lord's day, commonly called Sunday; and at other houses, rooms, or places, within the said cities, or in the neighbourhood thereof, under pretence of inquiring into religious doctrines, and explaining texts of Holy Scripture, debates have frequently been held on the evening of the Lord's day concerning divers texts of Holy Scripture, by persons unlearned and incompetent to explain the same, to the corruption of good morals, and to the great encouragement of irreligion and profaneness;" it is enacted, "that from and after the passing of this present act, any house, room, or other place, which shall be opened or used for public entertainment or amusement, or for publicly debating on any subject whatsoever, upon any part of the Lord's day called Sunday, and to which persons shall be admitted by the payment of money, or by tickets sold for money, shall be deemed a disorderly house or place: and the keeper of such house, room, or place, shall forfeit the sum of two hundred pounds for every day that such house, room, or place, shall be opened or used as aforesaid on the Lord's day, to such person as will sue for the same, and be otherwise punishable as the law directs in cases of disorderly houses; and the person managing or conducting such entertainment or amusement on the Lord's day, or acting as master of the ceremonies there, or as moderator, president, or chairman of any such meeting for public debate on the Lord's day, shall likewise, for every such offence, forfeit the sum of one hundred pounds to such person as will sue for the same; and every door-keeper, servant, or other person, who shall collect or receive money or tickets from persons assembling at such house, room, or place, on the Lord's day, or who shall deliver out tickets for admitting persons to such house, room, or place, on the Lord's day, shall also forfeit the sum of fifty pounds to such person as will sue for the same."

21 Geo. 3, c. 49.

From the passing of this act, any house &c. opened for public amusement or debate on a Sunday, to which persons shall be admitted by payment of money, &c. shall be deemed a disorderly house; and the keeper thereof shall forfeit 200*l.* for every Sunday the same shall be used as aforesaid.

Penalty on the president, &c.

Doorkeepers and servants.

2. "And whereas, by reason of the many subtle and crafty contrivances of persons keeping such houses, rooms, or places as aforesaid, it may often be difficult to prove who is the real owner or keeper thereof; be it enacted by the authority aforesaid, that any person who shall at any time hereafter appear, act, or behave him or herself as master or mistress, or as the person having the care, government, or management of any such house, room, or place as aforesaid, shall be deemed and taken to be the keeper thereof, and shall be liable to be sued or prosecuted, and punished as such, notwithstanding he or she be not in fact the real owner or keeper thereof: And wherever any such house, room, or place, shall belong to or be kept by divers persons in partnership, as joint-owners or joint-keepers thereof, each and every such joint-owner or joint-keeper of such house, room, or place, shall be deemed the keeper thereof, and shall be liable to be sued or prosecuted, and punished as such: And any house, room, or place, at which persons shall

The person who acts as master or mistress in any such house shall be deemed the owner thereof. Where there are joint owners, each of them shall be liable to prosecution. All houses where refreshments are sold at greater prices on Sundays than on other days, and such as shall be opened for public debate on Sundays by subscription, &c. shall be liable to the penalties inflicted by this act.

(*a*) See further as to the profanation of the Lord's day, tit. "*Lord's Day*," *Vol. III.*

21 Geo. 3, c. 49.

be supplied with tea, coffee, or any other refreshments of eating or drinking on the Lord's day, at any greater prices than the common and usual prices at which the like refreshments are commonly sold upon other days at such house, room, or place, or at coffee-houses, or other houses where the same are usually sold, shall be deemed a house, room, or place, to which persons are admitted by the payment of money, although money be not there taken in the name of or for admittance, or at the time when persons enter into or depart from such house, room, or place, and any house, room, or place, which shall be opened or used for any public entertainment or amusement, or for public debate on the Lord's day, at the expense of any number of subscribers or contributors to the carrying on any such entertainment, or amusement, or debate, on the Lord's day, and to which persons shall be admitted by tickets, to which the subscribers or contributors shall be entitled, shall be deemed a house, room, or place, to which persons are admitted by the payment of money within the meaning of this act."

Penalty on advertising any such public amusement for Sunday, and on printing such advertisement.

3. "And for the better preventing persons assembling on the Lord's day for such irreligious purposes as aforesaid, be it further enacted by the authority aforesaid, that any person advertising, or causing to be advertised, any public entertainment or amusement, or any public meeting for debating on any subject whatsoever, on the Lord's day, to which persons are to be admitted by the payment of money, or by tickets sold for money, and any person printing or publishing any such advertisement shall respectively forfeit the sum of fifty pounds for every such offence, to any person who will sue for the same."

Penalties how to be recovered.

4. "Any person entitled to either of the aforesaid forfeitures, may sue for the same by action of debt in any of his Majesty's courts of record at Westminster, in which it shall be sufficient to declare that the defendant is indebted to the plaintiff in the sum of , (being the sum demanded by the said action) being forfeited by an act made in the twenty-first year of the reign of his Majesty King George the Third, intituled, '*An Act for preventing certain Abuses and Profanations on the Lord's day, called Sunday;*' and the plaintiff, if he recover in any such action, shall have his full costs."

Actions to be brought within six months.

5. "Provided, that no action shall be brought for either of the said penalties by this act imposed, unless the same be brought within six calendar months next after the offence committed."

Persons sued in execution of this act may plead the general issue.

6. "Provided also, that if any action or suit shall be brought against any person for any thing done in pursuance and in execution of this act, the defendant may plead the general issue; and if a verdict pass for the defendant, or the plaintiff discontinue his or her action, or be nonsuited, or judgment be given against the plaintiff, then such defendant shall have treble costs."

The act not to affect the ecclesiastical jurisdiction;

7. "Provided also, that the ecclesiastical jurisdiction within this realm shall not by this act be altered or abridged; but that the ecclesiastical courts may punish the said offences, as if this act had not been made."

nor the Toleration Act of 1 W & M.

8. "Provided also, that nothing in this act contained shall be construed to extend to take away, alter, or abridge, any of the liberties or immunities to which the Protestant subjects of this kingdom are entitled, by an act made in the first year of the reign of King William and Queen Mary, intituled, '*An Act for exempting their Majesties' Protestant Subjects, dissenting from the Church of England, from the penalties of certain Laws.*'"

What an offence within 25 Geo II. c. 36.

To constitute an offence within sect. 2 of 25 Geo. II. c. 36, in the first place, the house or room must be kept with the defendant's knowledge; secondly, it must be kept *for the purpose* prohibited by the statute,—there must be something like an *habitual* keeping of it, which, however, need not be at stated intervals; thirdly, it must be public, to

which all persons have a right to go, whether gratuitously or on payment of money,—no matter whether paid to the defendant or not, if he knows of the payment. All these are questions to be left to the jury. There would be a difficulty in making the owner of a private house liable, because that is kept for the purpose of occupation, whereas a public-house is kept for entertainment; and a much less number of instances may be sufficient to render the owner liable for keeping it for the purposes mentioned in the statute. (*Per Parke, B., in Marks* v. *Benjamin*, 5 *M. & W.* 565): and, therefore, in an action of debt, to recover the penalty of 100*l.*, given by the act, it appeared that music, dancing, &c., had occasionally taken place at the defendant's house, (a public-house), that no money was taken by him for admission, but the rooms were let to persons who sold tickets and received money for admission at the door; but there was no direct evidence that the defendant knew of this practice:—Held, that, upon these facts, there was evidence to go to the jury of a keeping of the house by the defendant for the purposes mentioned in the statute, and that the judge was wrong in directing a nonsuit. (*Marks* v. *Benjamin*, 5 *M. & W.* 565). 21 Geo. 3, c. 49.

A room kept by a dancing-master, where persons met for the purpose of dancing, but to which no persons were admitted but subscribers or persons introduced by them, or by the defendant as their and his friends, and to which persons were not indiscriminately admitted, was held not within the act. (*Bellis* v. *Burghall*, 2 *Esp.* 722).

Nor will the mere temporary use of a room in a public-house or other house for the purpose of dancing or music, on a particular festival or occasion, be within the act. (*Shutt* v. *Lewis*, 5 *Esp.* 128; *Gregory* v. *Tuffs*, 6 *C. & P.* 271).

But a room in which musical performances are *regularly* exhibited, though not kept or used *solely* for that purpose, is within it. (*Bellis* v. *Beal*, 2 *Esp.* 592).

So, if a room be continually used for the purpose of music and dancing, it will be for the jury to say whether it is not kept for those purposes; and a room kept for drinking, music, and dancing, is within the act. (*Gregory* v. *Tavernor*, 6 *Car. & P.* 280).

So is a room within the act, though it is not *exclusively* used for dancing or music. (*Gregory* v. *Tuffs*, 6 *C. & P.* 271).

The act extends to licensed taverns and hotels, and it was no defence that the company frequenting the performances were respectable, or that the admission was not received for the immediate benefit of the house. (*Green* v. *Botheroyd*, 3 *Car. & P.* 471).

So, to make a party liable to a penalty under the act, it is not essential that he should take money for admission; and it is sufficient to shew that dancing was publicly carried on in a house belonging to defendant, without its being duly licensed; and Lord *Ellenborough* said, "that the taking of money for admission would be evidence of ownership." (*Archer* v. *Wellengrice*, 4 *Esp. Rep.* 186; *Gregory* v. *Tuffs*, 6 *C. & P.* 271).

A house kept for the purpose of *private* dancing may be within the act. (*Clarke* v. *Searle*, 1 *Esp. Rep.* 25).

Proof that there is nothing painted on the house denoting that it is licensed under the statute 25 Geo. II. c. 36, is sufficient *primâ facie* evidence in an action for penalties that it is unlicensed. (*Gregory* v. *Tuffs*, 6 *Car. & P.* 271).

Common gaming-house

Common gaming-houses are in general deemed nuisances. In an indictment for keeping one it seems to be sufficient to allege that the defendant kept a common gaming-house. (*R.* v. *Rogier*, 1 *B. & C.* 275; 2 *D. & R.* 431, *S. C.*) In that case it was held, that the keeping a common gaming-house, and for lucre and gain unlawfully causing and procuring divers idle and evil-disposed persons to frequent and come to play together, at a game called *rouge et noir*, and permitting the said

idle and evil-disposed persons to remain playing at the same game for divers large and excessive sums of money, is an indictable offence at common law. (See further, "*Gaming*," *Vol. III.*)

Keeping disorderly houses are nuisances at common law.

The keeping of any disorderly house and place of resort of an improper kind, is a nuisance at common law. (*R.* v. *Higginson*, 2 *Burr.* 1232).

Indictment for.

And all disorderly inns or ale-houses, bawdy-houses, play-houses unlicensed or improperly conducted, booths and stages for rope-dancers, mountebanks, and the like, are public nuisances, and may therefore be indicted, not only because they are great temptations to idleness, but also because they are apt to draw together great numbers of disorderly persons, which cannot but be very inconvenient to the neighbourhood. (1 *Hawk. c.* 75, *s.* 6, 7*th ed.*; 4 *Bla. Com.* 167; 1 *Russ.* 298).

Wife liable.

It seems that the offence of keeping a disorderly house is one for which a *feme covert* may be indicted. (1 *Russ.* 299; *R.* v. *Williams*, *Salk.* 384).

Several offenders.

Any number of persons may it seems be included in the same indictment, for keeping different disorderly houses, stating that they "severally" kept, &c. such houses (2 *Hale*, 173); but it is the practice to indict the offenders severally, and that is the best course.

Statement in indictment of situation of house, &c.

It seems that it is necessary to state where the house is situate, and the time, so as to make a particular statement of the offence, which is the *keeping* of the house. But particular facts need not be stated; and though the charge is thus general, yet at the trial evidence may be given of particular facts, and of the particlur time of doing them.

An indictment charged, that the defendant kept a disorderly house, and in the said house, for his own lucre, caused to be brought together divers idle, dissolute, depraved, and bad persons, to be and remain in his house, dancing, drinking, tippling, making great noises and disturbances, and behaving themselves *ad commune nocumentum*. Held, after verdict, to be a good indictment. (*Rex* v. *Warwick*, 6 *Law Journ. Rep.* (*N. S.*) *M. C.* 96).

Any one may take up the prosecution, though against prosecutor's consent.

After an indictment has been preferred by a private prosecutor, the court will allow any other person to go on with it, even against the consent of the prosecutor. (*R.* v. *Wood*, 3 *B. & Adol.* 657).

Evidence of persons frequenting the house.

It is not necessary to prove who frequents the house, for that may be impossible; but if any unknown persons are proved to be there, behaving disorderly, it is sufficient to support the indictment. (1 *Russ.* 302; *and see J'Anson* v. *Stuart*, 1 *T. R.* 754. *See Collyer's Statutes*, 416).

See further, tits. "*Gaming*," "*Lewdness*," *Vol. III.*; "*Nuisances*," *Vol. V.*

Forms.

(1). Indictment on 25 Geo. 2, c 36, for keeping an unlicensed dancing-house.

——(venue). *THE jurors for our Lady the Queen upon their oath present, that C. D. late of the parish of in the county of labourer, on the day of in the year of the reign of our Lady the now Queen Victoria, and E. F. late of the same place, labourer, on the day of in the year of the reign of our Lady the now Queen Victoria, and on divers other days and times between that day and the day of taking this inquisition, with force and arms, at the parish aforesaid, in the county aforesaid, and within twenty miles of the cities of London and Westminster, unlawfully did keep and maintain a certain room and place for public dancing and music, situate in the parish of in the county of aforesaid, and within twenty miles of the cities of London and Westminster, without a license had for that purpose from the last preceding Michaelmas quarter sessions of the peace for the county aforesaid, signified under the hands and seals of four or more of the justices there assembled at such session, according to the directions of the statute in such case made and provided, to the great damage and common nuisance of all the liege subjects of our said Lady the Queen, against the form of the statute in such case made and provided, and against the peace of our said*

Forms.

Lady the Queen, her crown and dignity. And the jurors aforesaid, on their oath aforesaid, do further present, that the said C. D. and E. F. on the day and year and on the other days and times aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully did keep and maintain, within twenty miles of the cities of London and Westminster, a certain room for public dancing without a license had for that purpose from the then last preceding Michaelmas quarter sessions of the peace, holden for the county of Middlesex, in which the said room is situate; against the form of the statute in such case made and provided, and against the peace of our said Lady the Queen, her crown and dignity. [Add another count like the second, using the word "*music*" instead of "*dancing*"]. *And the jurors aforesaid, on their oath aforesaid, do further present, that the said C. D. and E. F. with force and arms, at the parish aforesaid, in the county aforesaid, on the day and year and on the days and times aforesaid, did keep and maintain a certain common, ill-governed and disorderly room for public music and dancing, and in the said room, for their own lucre and gain, did cause and procure divers persons, as well men as women of evil name and fame, and of dishonest and improper conversation and conduct, to frequent and come together, to the great damage and common nuisance of all the liege subjects of our Lady the Queen, and against the peace of our said Lady the Queen, her crown and dignity.*

Second count.

Third count.

Fourth count, for a nuisance at common law.

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(2) Notice by two inhabitants to constable and overseers, to ground a prosecution on stats. 25 Geo. 2, c. 36, and 58 Geo. 3, c. 70, s. 7; [*ante*, 248, 249].

To A. B. constable of the parish [or "*township*"] *of in the county of , and to E. F. and G. H. overseers of the poor of the said parish* [or "*township.*"]

WE, J. J. and K. L. two of the inhabitants of the said parish [or "*township*"], *paying scot and bearing lot therein, do give you and each of you notice, that J. O. of the said parish of* [*gentleman*], *doth keep a gaming-house* [or "*bawdy-house,*" or other disorderly house, as the case is], *to wit, at a messuage and premises in the parish aforesaid; and we do hereby require you, the said constable and overseers, forthwith to go with us before some one of her Majesty's justices of the peace in and for the said county of to the intent that such proceedings may be had for the prosecution of the said J. O. for the said offence, as in and by the statute made and passed in the twenty-fifth year of the reign of the late King George the Second, intituled "An Act for the better preventing of thefts and robberies, and for regulating places of public entertainment, and punishing persons keeping disorderly houses," and also in and by a statute made and passed in the fifty-eighth year of the reign of his late Majesty King George the Third, are directed and required.*

Witness our hands, this day of &c.

J. J.
K. L.

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(3). Affidavit of truth thereof before a justice.

J. J. and K. L. severally make oath and say, that they severally believe the contents of the notice hereunto annexed, (a copy of which they have caused to be served on A. B. constable of the parish [or "*township*"] *of , and also upon E. F. and G. H. overseers of the poor of the said parish* [or "*township*"], *in the said county), to be true in substance and fact.*

J. J.
K. L.

Sworn by, &c. this day of, &c. before me, J. P. Esquire, one of her Majesty's justices of the peace in and for the county of

J. P.

(4.) Constable's or overseer's recognizance to prosecute.

BE it remembered, that on, &c. at in the said county, A. B. one of the constables of the parish [or "*township*"] *aforesaid,* [or "*E. F. and G. H. overseers of the poor of the said parish* or "*township*"], *personally came before me, J. P. Esquire, one of her Majesty's justices of the peace in and for the said county, and acknowledged himself* [or "*themselves*"] *to be indebted to our sovereign Lady the Queen in the penal sum of pounds.*

Whereas J. J. and K. L. two of the inhabitants of the said parish [or "*township*"] *have given notice in writing to the above bounden A. B. constable of the said parish* [or "*township,*" or "*E. F. and G. H. overseers of the poor of the*

Forms.

said parish" or *"township"*], *that I. O. of the parish aforesaid, in the county aforesaid,* [*gentleman*], *doth keep a gaming-house,* [*"bawdy-house,"* or *"other disorderly-house"*], *in the said parish* [or *"township"*] *and county, and having severally made affidavit of their belief in the truth of the contents of the said notice, have also severally entered into a recognizance in the penal sum of pounds each before me, the said justice, on condition that they shall give or produce material evidence against the said I. O. for the said offence. Now the condition of this present recognizance is such, that if the above bounden A. B.* [or *"E. F. and G. H."*] *do and shall prosecute with effect the said I. O. for the said offence, then this recognizanee to be void, otherwise of force.*

Acknowledged before me J. P.

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(5). Warrant to apprehend the keeper of a disorderly house.

——— } *To the Constable of the parish* [or *"township"*] *of in the said county.*

WHEREAS J. J. and K. L. two of the inhabitants of the parish [or *"township"*] *of in the said county of paying scot and bearing lot within the said parish* [or *"township"*], *having given notice in writing to A. B. constable of the said parish* [or *"township"*], *and also to E. F. and G. H. overseers of the poor of the said parish* [or *"township"*], *that I. O. of the said parish* [or *"township"*], [*gentleman*], *doth keep a gaming-house,* [or *"bawdy-house,"* or other disorderly house], *in the said parish* [or *"township"*], *and have also this day severally made affidavits before me one of her Majesty's justices of the peace in and for the said county, that they believe the contents of the said notice to be true; and have also severally entered into a recognizance in the penal sum of pounds each, on condition to give or produce material evidence against the said I. O. These are therefore to command you forthwith to bring the said I. O. before me, on the day of next, at the hour of in the noon, at to be bound over to appear at the next* [*general quarter*] *sessions of the peace, to be held in and for the said county, there to answer to such bill of indictment as shall be found against him for such offence. Given under my hand and seal, &c.*

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(6). Allowance of constable's expenses in the prosecution by order on overseers and two justices, to pay them.

——— } *WHEREAS A. B. constable of the parish* [or *"township"*] *of*
to wit. } *in the said county, hath this day made oath before us, J. P. and L. M. Esquires, two of her Majesty's justices of the peace in and for the said county, that he hath truly and* bonâ fide *expended the sum of in the prosecution of one I. O, for keeping a gaming-house,* [*"bawdy house,"* or other disorderly house], *at aforesaid, in pursuance of the condition of the said A. B.'s recognizance: Now we the said justices do hereby ascertain and allow the said A. B. the said sum of as and for the reasonable expenses of the said prosecution, and we do hereby require the overseers of the said parish of forthwith to pay the said A. B. the said sum of .*

In witness whereof we have hereunto set our hands, at aforesaid, in the county aforesaid, this day of &c.

J. P.
L. M.

Dissenters.

I. *Of Protestant Dissenters in general,* 257.

[1 Eliz. c. 2; 23 Eliz. c. 1; 29 Eliz. c. 6; 35 Eliz. c. 1; 3 Jac. I. c. 4; 3 Jac. I. c. 5; 1 W. & M. c. 18; 52 Geo. III. c. 155; 53 Geo. III. c. 160].

II. *Dissenting Ministers,* 261.

[1 W. & M. c. 18; 10 Ann. c. 2; 19 Geo. III. c. 44; 42 Geo. III. c. 90; 43 Geo. III. c. 10; 43 Geo. III. c. 96; 52 Geo. III. c. 155].

III. *Dissenting Schoolmasters,* 266.

[23 Eliz. c. 1; 13 & 14 Car. II. c. 4; 19 Geo. III. c. 44].

I. Of Protestant Dissenters in general.

By the 1 Eliz. c. 2, s. 14, every person not having reasonable excuse shall resort to his parish church or chapel, or upon reasonable let thereof, to some usual place where common prayer shall be used, on every Sunday and holiday; on pain of punishment by the censures of the church, or of forfeiting for every offence 12*d*. (*See "Lord's Day," Vol. III.*)

1 Eliz. c. 2. Persons to resort to church, &c.

Every person above the age of sixteen, who shall not repair to some church or chapel, or usual place of common prayer, shall forfeit for every month 20*l*. And if he shall forbear for twelve months, he shall be bound to good behaviour till he conform. (23 Eliz. c. 1.)

23 Eliz. c. 1.

Every offender in not repairing to church, having been once convicted, shall, without any other indictment or conviction, pay half-yearly into the Exchequer 20*l*. for every month afterwards, until he conform; which, if he shall omit to do, the King may seize all his goods, and two parts of his lands. (29 Eliz. c. 6).

29 Eliz. c. 6. Penalties for not doing so.

And the King may refuse the 20*l*. a month, and take two parts of the land, at his option. (3 Jac. I. c. 4).

3 Jac. 1, c. 4.

No recusant in not repairing to church, being convicted thereof, shall enjoy any public office, or shall practise law or physic, or be executor, administrator, or guardian. (3 Jac. I. c. 5).

3 Jac. 1, c. 5.

And if any person refusing to repair to church shall be present at any assembly, meeting, or conventicle, under pretence of any exercise of religion, he shall be imprisoned till he conform; and if he shall not conform in three months, he shall abjure the realm; which if he shall refuse to do, or after abjuration shall not go, or shall return without license, he shall be guilty of felony without benefit of clergy (*a*). And whether he shall abjure or not, he shall forfeit his goods, and shall forfeit his lands during life. (35 Eliz. c. 1).

35 Eliz. c. 1.

But several statutes relating to this subject were repealed at the time of the Revolution, and the 1 Will. III. c. 18, s. 1, was passed, (commonly called *The Act of Toleration*, declared by stat. 19 Geo. III. c. 44, to be a public act), and which enacts that neither the statutes aforesaid nor any other made against papists and popish recusants, (except stat. 25 Car. II. c. 2 (*b*), concerning the qualifying for offices, and 32 Car. II. st. 2, c. 1, containing the declaration against popery (*c*)), shall extend to any person dissenting from the Church of England, who shall, at the general sessions of the peace to be held for the county or place where such person shall live, take the oaths of allegiance and supremacy, and make and subscribe the said declaration against popery, of which the court shall keep a register, and no officer shall take any fee above 6*d*. for registering the same, nor that more than once, and 6*d*. for a certificate thereof signed by such officer.

1 Will. 3, c. 18. Privileges given by the act of toleration.

Provided that no congregation or assembly for religious worship shall be permitted until the place of meeting be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter sessions of the county, city or place. And the registrar or clerk of the peace shall register or record the same, and give certificate thereof to any who shall demand the same; for which no greater fee shall be taken than 6*d*. And provided, that during the time of meeting, the doors shall not be locked, barred, or bolted. (Sects. 19 & 5).

Places of meeting to be certified.

A congregation of Lutherans, using the German language in their

Lutherans.

(*a*) The benefit of clergy is now abolished. (*See "Clergy, Benefit of"*), *Vol. I.*

(*b*) This act is repealed by the 9 Geo. IV. c. 17. It is called the Test Act.

(*c*) See the 10 Geo. IV. c. 7, s. 1; "*Popery,*" *Vol. V.*

1. *Dissenters in general.*

service, are within the protection of the above act of William. (*R.* v. *Hube*, *Peake*, 142; 5 *T. R.* 542, S. C.)

52 Geo. 3, c. 155. All places of religious worship to be certified and registered.

The stat. 52 Geo. III. c. 155, s. 1, repeals certain old statutes, and by sect. 2 enacts, "that no congregation or assembly for religious worship of Protestants (at which there shall be present more than twenty persons besides the immediate family and servants of the person in whose house or upon whose premises such meeting, congregation, or assembly shall be had) shall be permitted or allowed, unless and until the place of such meeting, if the same shall not have been duly certified and registered under any former act or acts of Parliament relating to registering places of religious worship, shall have been or shall be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general or quarter sessions of the peace for the county, riding, division, city, town, or place in which such meeting shall be held; and all places of meeting which shall be so certified to the bishop's or archdeacon's court shall be returned by such court once in each year to the quarter sessions of the county, riding, division, city, town or place, and all places of meeting which shall be so certified to the quarter sessions of the peace shall be also returned once in each year to the bishop or archdeacon; and all such places shall be registered in the said bishop's or archdeacon's court respectively, and recorded at the said general or quarter sessions, the registrar or clerk of the peace whereof respectively is hereby required to register and record the same; and the bishop, or registrar, or clerk of the peace, to whom any such place of meeting shall be certified under this act, shall give a certificate thereof to such person or persons as shall request or demand the same, for which there shall be no greater fee nor reward taken than 2*s.* 6*d.*; and every person who shall knowingly permit or suffer any such congregation or assembly as aforesaid to meet in any place occupied by him, until the same shall have been so certified as aforesaid, shall forfeit, for every time any such congregation or assembly shall meet contrary to the provisions of this act, a sum not exceeding 20*l.* nor less than 20*s.*, at the discretion of the justices who shall convict for such offence" (*a*).

Penalty for permitting meetings in places not duly certified.

(*a*) *R.* v. *Hall*, (1 *T. R.* 320), which was a conviction on stat. 22 Car. II. c. I, repealed by stat. 52 Geo. III. c. 155, s. 1. The following is the form of such conviction:—

"*Parts of Kesteven, in the county of Lincoln.* } *BE it remembered, that on the 2nd day of March, in the twenty-sixth year, &c. at New Sleaford, in the parts of K. aforesaid, &c., Robert Benson, Clerk, came before me Richard Brown, Esquire, one of the justices, &c., and gave me the said justice to understand and be informed that one Samuel Hall, carpenter, being the occupier of a certain dwelling-house, situate in the parish of Heckington, in the parts and county aforesaid, did, on the 26th of February now last past, at the parish of Heckington aforesaid, wittingly and willingly suffer a meeting and unlawful assembly of divers persons to be held in his said dwelling-house, for the exercise of religious worship, in other manner than according to the liturgy and practice of the Church of England, between the hours of one and eight o'clock in the afternoon of the same day; at which meeting and unlawful assembly, five persons and more were assembled together over and above those of the said S. Hall's household; (the dwelling-house in which the said meeting and unlawful assembly was held not being certified to the bishop of the diocese, or to the archdeacon of that archdeaconry, or to the justices of the peace at their general or quarter sessions of the peace for the parts and county in which the said meeting was held, nor registered in the said bishop's or archdeacon's court, nor recorded at the said general or quarter sessions); against the form of the statutes in such case made and provided, whereby the said S. Hall hath forfeited the sum of 20l., to be distributed, &c. And now, on the 6th day of the said month of March, in the twenty-sixth year, &c., at &c., came the said S. Hall before me the said justice, in pursuance of my summons, &c., when the said information, together*

1. *Dissenters in general.*

Door not to be barred, &c.

And by sect. 11 of the same statute, no meeting, assembly, or congregation of persons for religious worship shall be had in any place with the door bolted or barred, or otherwise fastened, so as to prevent any person entering therein during the time of any such meeting, &c., and the person teaching or preaching at any such meeting, assembly, or congregation, shall forfeit for every time any such meeting, &c. shall be held with the doors locked, &c. as aforesaid, not exceeding 20*l.* nor less than 40*s.*, at the discretion of the justices convicting for such offence.

1 W. & M. c. 18. Disturbing the congregation.

By the 1 W. & M. c. 18, s. 18, any person who shall willingly, and of purpose maliciously or contemptuously, come into any cathedral, or parish church, chapel, or other congregation permitted by this act, and disquiet or disturb the same, or misuse any preacher or teacher, shall, on proof thereof before any justice by two witnesses, find two sureties in 50*l.*; and in default of such sureties shall be committed to prison till the next sessions; and upon conviction at such sessions shall forfeit 20*l.* to the King.

On an indictment on this act, it is no defence that the violence was

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with the examinations in writing of Joseph Wilkinson and Joseph Chamberlain, both of H. aforesaid, two credible witnesses, taken upon their respective corporal oaths before me the said justice, being openly read, which said examination set forth, that, on the said 26th day of February, the said J. Wilkinson and J. Chamberlain went to the dwelling-house of the said S. Hall, at H. aforesaid, and found a great number of people assembled at the dwelling-house of the said S. Hall, and that one Joseph Meryweathers was preaching to the said assembly, that the said dwelling-house at which the said meeting and assembly was holden, was not certified or registered as by law required, and that they also saw there Peter Jarvis, John Taylor, William Taylor, and Robert Bowles, all of the said parish of H., attending the said meeting. And the said S. Hall being now here required by me to answer the premises, he the said S. Hall pleadeth and confesseth the offence charged upon him in and by the said information. Wherefore, &c., he hath forfeited 20l."

Several objections were taken to this conviction: 1st, The information is not in the *present* tense. It is stated that the informer *came* before the justice and *gave* him to understand, &c. 2ndly, That the evidence was not given in the presence of the defendant, which it ought to have been; the defendant should have been called on to plead before the evidence was received; but the justice read over improper evidence, which should not have been given, and then called on the defendant to answer the premises, by which means he was confounded and induced to plead guilty. 3rdly, Though this is charged as an offence against *stat.* 22 *Car. II. only*, yet it concludes contrary to the *statutes*, which is fatal. 4thly, The information does not contain a charge within the stat. 22 Car. II. c. 1, upon which the justice professes to convict; and though it profess to set out an offence against that statute, yet it is not confined to that statute only, but negatives several exceptions in 1 Will. & M. c. 18. Therefore, though it was not necessary to negative any of the exceptions under the latter act, yet having undertaken so to do, the omission of any one is fatal, and it is not stated *that he did not take the oaths, &c.*, which is required by the third section of that statute. The court said, that however inclined they were to listen to trivial objections to such prosecutions, yet none of the present were sufficient in point of law. As to the first, the words objected to were better in the *past* than *present* tense, because they referred to a time past, *(viz.)* the time of making the information. The second is cured by the defendant *pleading guilty*. As to the third and fourth, this is a conviction on 22 Car. II.; therefore the exceptions in 1 Will. & M. c. 18, need not have been negatived, and may be rejected as surplusage; for if a subsequent statute make any exception to a former one, it is incumbent on the defendant to shew by way of defence that he comes within such exception. And, besides, the 13th section of 22 Car. II. directs that that act shall be construed most largely and beneficially for the suppressing of conventicles, &c., and that no proceedings thereupon shall be impeached for want of form. Conviction affirmed.

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committed in the defendant's asserting his right to the clerk's reading-desk. (*R.* v. *Hube, Peake*, 132; 5 *T. R.* 542).

It need not be proved that the minister has taken the toleration oaths. (*Ib.*)

R. v. *Hube and others* (5 *T. R.* 542), the defendants were indicted on stat. 1 W. & M. c. 18, and the indictment was by *certiorari* removed by the prosecutor into the King' Bench before verdict. And it was moved, that as the penalty of 20*l.* was to be paid *upon conviction of the said offence at the said general or quarter sessions*, the statute intended to confine the cognizance of the offence to the sessions, and that the power to remove by *certiorari* was therefore taken away by necessary implication. But the court held that the *certiorari* was not taken away by this statute, and that the indictment was therefore well removed.

52 Geo. 3, c. 155. Penalty on disturbing religious assemblies.

By stat. 52 Geo. III. c. 155, s. 12, "if any person or persons, at any time after the passing of this act, do and shall wilfully and maliciously or contemptuously disquiet or disturb any meeting, assembly, or congregation of persons assembled for religious worship, permitted or authorized by this act, or any former act or acts of Parliament, or shall in any way disturb, molest, or misuse any preacher, teacher, or person officiating at such meeting, assembly, or congregation, or any person or persons there assembled, such person or persons so offending, upon proof thereof before any justice of the peace, by two or more credible witnesses, shall find two sureties to be bound by recognizances in the penal sum of £50 to answer for such offence, and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions; and upon conviction of the said offence, at the said general or quarter sessions, shall suffer the pain and penalty of £40."

Certiorari.

In the case of *R.* v. *Wadley* (4 *M. & Sel.* 508) it was held, that an indictment upon stat. 52 Geo. III. c. 155, s. 12, may be removed into the Court of King's Bench by *certiorari* before trial.

8 W. & M c 18. Dissenter being appointed to offices may appoint a deputy.

By stat. 1 Will. & Mary, c. 11, s. 7, "if any person dissenting from the Church of England as aforesaid shall be appointed to the office of high constable, petty constable, churchwarden, overseer of the poor, or any other parochial or ward office, and shall scruple to take upon him the office, in regard of the oaths or otherwise, he may execute the same by a sufficient deputy, that shall comply with the laws on this behalf: provided that the deputy be allowed and approved by such person, and in such manner as such officer should by law have been allowed and approved."

But no congregation shall be permitted by this act until the place of the meeting shall be certified to the bishop or the archdeacon, or the justices at the sessions for the place in which, &c., and registered in the bishop's or archdeacon's court, or recorded at the sessions. (Sect 19).

53 Geo. 3, c. 160.

The provisions contained in the act of Will. & Mary, and in the 9 & 10 Will. III., respecting the denial of the Trinity, are repealed by the stat. 53 Geo. III. c. 160.

Common law not altered.

It seems that the 53 Geo. III. does not alter the common law with respect to impugning the doctrine of the Trinity, but only removes the penalties imposed on persons denying such doctrines by 9 & 10 Will. III. c. 32, and extends to such persons the benefits conferred on all other Protestant dissenters by 1 Will. & Mary, sess. 1, c. 18. (*R.* v. *Waddington*, 1 *B. & Cres.* 26).

Exemptions from tolls.

In the case of *Lewis* v. *Hammond* (2 *B. & Ald.* 206), where a turnpike act exempted persons from toll "in going to and returning from their proper parochial church, chapel, or other place of religious worship on Sundays," it was held that the word "parochial" extended over the whole clause; and therefore that a dissenter was not within the exemption in going to and returning from his proper place of religious worship, situate out of the parish in which he resided. (*And see "Highways, Turnpike," Vol. III.*)

The 9 Geo. IV. c. 17, repeals in part the Test and Corporation Acts, and substitutes a declaration in lieu of the sacramental test. (*See "Office," Vol. III.*)

2. *Dissenting Ministers.*

Repeal of Test and Corporation Acts.

II. Dissenting Ministers.

The three statutes, viz. 17 Car. II. c. 2, 22 Car. II. c. 1, and 13 & 14 Car. II. c. 1, relating to the disabilities of dissenting ministers before the Revolution, are repealed by stat. 52 Geo. III. c. 155, s. 1.

Repeal of acts.

By stat. 19 Geo. III. c. 44, s. 1, every person dissenting from the Church of England, in holy orders, or pretended holy orders, or pretending to holy orders, being a preacher or teacher of any congregation of dissenting Protestants, who shall take the oaths and make and subscribe the declaration against popery required by the 1 Will. & Mary, c. 18, to be taken, made, and subscribed by Protestant dissenting ministers, and shall also make and subscribe the declaration in the words following, viz. *I, A. B., do solemnly declare, in the presence of Almighty God, that I am a Christian and a Protestant, and as such that I believe that the Scriptures of the Old and New Testament, as commonly received among Protestant Churches, do contain the revealed will of God; and that I do receive the same as the rule of my doctrine and practice;* shall be entitled to all the benefits of the said act of 1 Will. & Mary, c. 18, and 10 Ann. c. 2. And the justices at the sessions where any Protestant dissenting minister shall live, are required to tender and administer the said last-mentioned declaration to such minister, upon his offering himself to make and subscribe the same, and thereof to keep a register; for the registering of which he shall pay 6*d.* to the officer of the court, and no more; and 6*d.* for a certificate thereof signed by such officer.

19 Geo. 3, c. 44. Protestant dissenting ministers who shall take the oaths, &c. required by the Toleration Act, &c. shall be entitled to all the benefit of that statute, and 10 Ann. c. 2.

By stat. 10 Ann. c. 2, s. 9, any preacher or teacher of any congregation of dissenting Protestants, duly qualified according to the act of Will. & Mary, shall be allowed to officiate in any congregation, although the same be not in the county where he was so qualified, provided that the place of meeting hath been duly certified and registered; and such teacher or preacher shall, if required, produce a certificate of his having so qualified himself, under the hand of the clerk of the peace where he was qualified, and shall also, before any justice of such county or place where he shall so officiate, make and subscribe such declaration, and take such oaths as aforesaid, if required.

10 Ann. c. 2. Being qualified may officiate in any county.

And every such teacher and preacher, that is a minister, preacher, or teacher of a congregation, having taken the oaths and subscribed as aforesaid, shall from thenceforth be exempted from serving on any jury, or from being chosen or appointed to bear the office of churchwarden, overseer of the poor, or any other parochial or ward office, or other offices, in any hundred of any shire, city, town, parish, division, or wapentake, by stats. 1 Will. & Mary, c. 18, s. 11, and 19 Geo. III. c. 44, s. 1; and from serving in the militia, either personally or by substitute, if he be a licensed teacher of any separate congregation, and has been licensed twelve months previous to the yearly general meeting appointed to be held in October, &c., by stats. 42 Geo. III. c. 90, and 43 Geo. III. c. 10; and from serving under the Army of Reserve Act, "if he be a licensed teacher of any separate congregation in holy orders, or pretended holy orders, and not carrying on any other trade, or exercising any other occupation for his livelihood, except that of a schoolmaster," by 43 Geo. III. c. 96, s. 12.

1 W. & M. c. 18. 19 Geo. 3, c. 44. Exempted from offices.

42 Geo 3, c. 90. 43 Geo. 3, c. 10, s. 96.

Any other Parochial Office.]—Stat. 1 Will. & Mary, c. 18, s. 11, extends to all parish offices, whether they existed at that time or were created since that act. And therefore in the case of *Kenward* v. *Knowles*, (*C. P. Will.* 463), it was decided that a baptist preacher, qualified according to that act, was exempted from serving the office of one of the

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collectors of the rates for rebuilding St. Olave's church in Southwark, under stat. 10 Geo. III. c. 18. And it was also ruled that the party was equally entitled to his exemption, though he was engaged in trade.

R. v. Justices of Denbighshire.

R. v. *The Justices of Denbighshire*, (14 *East*, 285; *and see* 15 *East*, 576, 589). A motion was made upon stat. 1 Will. & Mary, c. 18, s. 8, (the Toleration Act), for a *mandamus* to the justices of Denbigh, at their next sessions, to admit David Lewis to take the oaths and make and subscribe the declaration required under that statute. The motion was made upon an affidavit of David Lewis, in which he described himself as "a Protestant dissenter," who "preaches to several congregations of Protestant dissenters;" stating the circumstances of his application to the justices at their last sessions, and of his tendering himself to take the oaths and make and subscribe the declaration mentioned in the statute; that the chairman of the court required of him a certificate of his having a separate congregation, and that upon his saying he had no separate congregation, the sessions refused to adminster the oath to him, &c. After the words of the Toleration Act had been stated, Lord *Ellenborough*, C. J., inquired whether the person applying now swore to the fact of his being the teacher or preacher of any separate congregation of Protestant dissenters? and being answered in the negative, *Bayley*, J., asked if he were not the teacher or preacher of any certain congregation, under what description in the 8th clause he brought himself? To which it was answered, as a teacher or preacher of several congregations of Protestant dissenters, though not attached to any particular separate congregation of his own. Lord *Ellenborough*, C. J.—"The chairman of the sessions might have been wrong in asking this person for a certificate of his having a separate congregation; but still, to entitle himself to succeed in his application, he ought to show himself to be the acknowledged teacher or preacher of some particular congregation, or to bring himself within some other qualifying description in the act, in order to be entitled to the exemption which he seeks." *Grose*, J., agreed. *Le Blanc*, J.—"If the party be in holy orders, or pretend to holy orders, though he have no particular congregation of his own, he would come within the 8th section; but if he applied merely as a teacher or preachor, not pretending to holy orders, he must state himself to be the teacher or preacher of some particular congregation of Protestant dissenters by whom he is recognized in that character." *Bayley*, J.—"This clause of the Toleration Act meant to relieve persons who had Protestant dissenting congregations severally attached to them, at the time they made the application to the sessions, from the penalties imposed by former acts, for officiating as preachers to such congregations." Rule refused.

This decision occasioned the passing of the following act.

52 Geo. 3, c 155. Penalty on persons preaching without consent of occupiers.

By the 52 Geo. III. c. 155, intituled "*An Act to repeal certain Acts and amend other Acts relating to Religious Worship and Assemblies, and Persons Teaching or Preaching therein*," s. 3, "every person who shall teach or preach in any congregation or assembly as in this act aforesaid (*ante*, 258), in any place, without the consent of the occupier thereof, shall forfeit for every such offence any sum not exceeding 30*l.* nor less than 40*s.*, at the discretion of the justices who shall convict for such offence."

Exemptions in favour of preachers and persons resorting to religious assemblies duly certified, &c.

Sect. 4. "That from and after the passing of this act, every person who shall teach or preach at, or officiate in, or shall resort to any congregation or congregations, assembly or assemblies, for religious worship of Protestants, whose place of meeting shall be duly certified according to the provisions of this act, or any other act or acts of Parliament relating to the certifying and registering of places of religious worship, shall be exempt from all such pains and penalties under any act or acts of Parliament relating to religious worship, as any person who shall have taken the oaths and made the declaration prescribed by or mentioned in an act made in the first year of the reign of King William

and Queen Mary, intituled 'An Act for exempting their Majesties' Protestant subjects dissenting from the Church of England, from the penalties of certain laws,' or any act amending the said act, (see tit. '*Oaths*,' *Vol. V.*), is by law exempt, as fully and effectually as if all such pains and penalties, and the several acts enforcing the same, were recited in this act, and such exemptions as aforesaid were severally and separately enacted in relation thereto."

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52 Geo. 3, c. 155.

One justice to have power in certain cases to require the oath and declaration to be made and subscribed.

Sect. 5. Provided that "every person not having taken the oaths and subscribed the declaration hereinafter specified, who shall preach or teach at any place of religious worship certified in pursuance of the directions of this act, shall, when thereto required by any one justice of the peace, by any writing under his hand or signed by him, take, and make, and subscribe in the presence of such justice of the peace, the oaths and declarations specified and contained in an act passed in the nineteenth year of the reign of his Majesty King George the Third, intituled 'An Act for the further relief of Protestant Dissenting Ministers and Schoolmasters,' (see '*Oaths*,' *Vol. V.*); and no such person who, upon being so required to take such oaths and make such declaration as aforesaid, shall refuse to attend the justice requiring the same, or to take and make and subscribe such oaths and declaration as aforesaid, shall be thereafter permitted or allowed to teach or preach in any such congregation or assembly for religious worship, until he shall have taken such oaths, and made such declaration as aforesaid, on pain of forfeiting, for every time he shall so teach or preach, any sum not exceeding ten pounds nor less than ten shillings, at the discretion of the justice convicting for such offence."

19 Geo. 3, c. 44.

Persons so required not to go more than five miles from home.

Sect. 6. "No person shall be required by any justice of the peace to go to any greater distance than five miles from his own home, or from the place where he shall be residing at the time of such requisition, for the purpose of taking such oaths as aforesaid."

Any Protestant person may require the justice to administer the oath and tender the declaration.

Sect. 7. "It shall be lawful for any of his Majesty's Protestant subjects to appear before any one justice of the peace, and to produce to such justice of the peace a printed or written copy of the said oaths and declaration, and to require such justice to administer such oaths and to tender such declaration to be made, taken, and subscribed by such person; and thereupon it shall be lawful for such justice, and he is hereby authorized and required to administer such oaths, and to tender such declaration, to the person requiring to take and make and subscribe the same; and such person shall take and make and subscribe such oaths and declaration in the presence of such justice accordingly; and such justice shall attest the same to be sworn before him, and shall transmit or deliver the same to the clerk of the peace for the county, riding, division, city, town, or place for which he shall act as such justice of the peace, before or at the next general or quarter sessions of the peace for such county, riding, division, city, town, or place."

Certificate to be given by the justice.

Sect. 8. "Every justice of the peace before whom any person shall make and take and subscribe such oaths and declaration as aforesaid, shall forthwith give to the person having taken, made, and subscribed such oaths and declaration, a certificate thereof under the hand of such justice, in the form following: that is to say,

I. A. B., one of her Majesty's justices of the peace for the county, ["*riding, division, city,*" or "*town,*" or "*place,*" as the case may be,] *of* , *do hereby certify, that C. D., of &c.* [describing the christian and surname and place of abode of the party], *did this day appear before me, and did make and take and subscribe the several oaths and declarations specified in an act made in the fifty-second year of the reign of King George the Third, intituled,* [set forth the title of this act, see the title *ante*]. *Witness my hand, this day of* , *one thousand eight hundred and*

And for the making and signing of which certificate, where the said oaths and declaration are taken and made on the requisition of the party

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52 Geo 3, c. 155.

taking and making the same, such justice shall be entitled to demand and have a fee of two shillings and sixpence, and no more; and such certificate shall be conclusive evidence that the party named therein has made and taken the oaths and subscribed the declaration in manner required by this act."

Exemption from civil and military offices and duties.

Sect. 9. "Every person who shall teach or preach in any such congregation or assembly, or congregations or assemblies as aforesaid, who shall employ himself solely in the duties of a teacher or preacher, and not follow or engage in any trade or business, or other profession, occupation, or employment, for his livelihood, except that of a schoolmaster, and who shall produce a certificate of some justice of the peace, of his having taken and made and subscribed the oaths and declaration aforesaid, shall be exempt from the civil services and offices specified in the said recited act passed in the first year of King William and Queen Mary, and from being balloted to serve and from serving in the militia or local militia of any county, town, parish, or place in any part of the United kingdom."

Penalty on producing a false certificate

Sect. 10. "Every person who shall produce any false or untrue certificate or paper, as and for a true certificate of his having made and taken the oaths and subscribed the declaration by this act required, for the purpose of claiming any exemption from civil or military duties as aforesaid, under the provisions of this or any other act or acts of Parliament, shall forfeit for every such offence the sum of 50*l.*; which penalty may be recovered by and to the use of any person who will sue for the same by any action of debt, bill, plaint, or information in any of his Majesty's courts of record at Westminster, or the courts of great sessions in Wales (*a*), or the courts of counties palatine of Chester, Lancaster, and Durham, (as the case shall require); wherein no essoin, privilege, protection, or wager of law, or more than one imparlance shall be allowed."

This act not to affect the Church.

Sect. 13. "Nothing in this act contained shall affect or be construed to affect the celebration of divine service according to the rites and ceremonies of the united Church of England and Ireland, by ministers of the said church, in any place hitherto used for such purpose, or being now or hereafter duly consecrated or licensed by any archbishop or bishop, or other person lawfully authorized to consecrate or license the same, or to affect the jurisdiction of the archbishops or bishops, or other persons exercising lawful authority in the Church of the United Kingdom over the said Church, according to the rules and discipline of the same, and to the laws and statutes of the realm; but such jurisdiction shall remain and continue as if this act had not passed."

Nor Quakers.

Sect. 14. Provided "that nothing in this act contained shall extend or be construed to extend to the people usually called Quakers, nor to any meetings or assemblies for religious worship held or convened by such persons; or in any manner to alter or repeal or affect any act, other than and except the acts passed in the reign of King Charles the Second hereinbefore repealed, relating to the people called Quakers, or relating to any assemblies or meetings for religious worship held by them."

How conviction to be made and levied.

Sect. 15. "Every person guilty of any offence, for which any pecuniary penalty or forfeiture is imposed by this act, in respect of which no special provision is made, shall and may be convicted thereof by information upon the oath of any one or more credible witness or witnesses before any two or more justices of the peace acting in and for the county, riding, city, or place wherein such offence shall be committed; and that all and every the pecuniary penalties or forfeitures which shall be incurred or become payable for any offence or offences against this

(*a*) The Welsh jurisdiction is abolished by 1 Will. IV. c. 76, "*Wales*," *Vol. VI.*

52 Geo. 3, c. 155.

act, shall and may be levied by distress under the hand and seal, or hands and seals, of two justices of the peace for the county, riding, city, or place in which any such offence or offences was or were committed, or where the forfeiture or forfeitures was or were incurred, and shall when levied be paid one moiety to the informer, and the other moiety to the poor of the parish in which the offence was committed; and in case of no sufficient distress whereby to levy the penalties, or any or either of them imposed by this act, it shall and may be lawful for any such justices respectively, before whom the offender or offenders shall be convicted, to commit such offender to prison for such time, not exceeding three months, as the said justices in their discretion shall think fit."

Appeal.

Sect. 16. "In case any person or persons who shall hereafter be convicted of any of the offences punishable by this act, shall conceive him, her, or themselves to be aggrieved by such conviction, then and in every such case it shall and may be lawful for such person or persons respectively, and he, she, or they shall or may appeal to the general or quarter sessions of the peace holden next after such conviction in and for the county, riding, city, or place, giving unto the justices before whom such conviction shall be made, notice in writing within eight days after any such conviction of his, her, or their intention to prefer such appeal; and the said justices in their said general or quarter sessions shall and may, and they are hereby authorized and empowered to proceed to the hearing and determination of the matter of such appeal, and to make such order therein, and to award such costs to be paid by and to either party, not exceeding 40*s*., as they in their discretion shall think fit."

Time for suing for penalties.

Sect. 17. "No penalty or forfeiture shall be recoverable under this act, unless the same shall be sued for, or the offence in respect of which the same is imposed is prosecuted before the justices of the peace or quarter sessions, within six months after the offence shall have been committed; and no person who shall suffer any imprisonment for non-payment of any penalty shall thereafter be liable to the payment of such penalty or forfeiture."

Limitation of actions.

Venue.

General issue.

Sect. 18. "If any action or suit shall be brought or commenced against any person or persons for any thing done in pursuance of this act, that every such action or suit shall be commenced within three months next after the fact committed, and not afterwards, and shall be laid and brought in the county wherein the cause or alleged cause of action shall have accrued, and not elsewhere; and the defendant or defendants in such action or suit may plead the general issue, and give this act and the special matter in evidence on any trial to be had thereupon, and that the same was done in pursuance and by authority of this act; and if it shall appear so to be done, or if any such action or suit shall be brought after the time so limited for bringing the same, or shall be brought in any other county, city, or place, that then and in such case the jury shall find for such defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her, or their action or actions, or if a verdict shall pass against the plaintiff or plaintiffs, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have and may recover treble costs, and have the like remedy for the same, as any defendant or defendants hath or have for costs of suit in other cases by law."

Treble costs (*a*).

(*a*) The 5 & 6 Vict. c. 97, s. 3, repeals this and similar clauses in all public acts; and enacts, that instead of such treble costs the parties "shall receive such full and reasonable indemnity as to all costs, charges, and expenses incurred in and about any action, suit, or other legal proceeding as shall be taxed by the proper officer in that behalf, subject to be reviewed in like manner and by the same authority as any other taxation of costs by such officer."

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Describing property in larceny.

The goods in a dissenting chapel, vested in trustees, cannot be laid as the property of a servant who had the custody of the chapel, and of the things in it, to clean and keep in order, although he has the key of the chapel, and no one but the minister has another key. (*R.* v. *Hutchinson, Ry. & M. C. C. R.* 412).

The management of the affairs of a dissenting chapel was vested in the communicants. The congregation being dissatisfied with their minister held a meeting, at which they resolved that he should be recommended to resign. Neither the minister nor a majority of the communicants was present at the meeting, but the resolution was afterwards signed by a majority of them, and communicated to the minister :—Held, that the resolution was tantamount to a dismissal, although not come to at a meeting at which a majority of the communicants was present. (*Attorney-General* v. *Aked*, 7 *Sim.* 321).

III. Dissenting Schoolmasters.

23 Eliz c 1.

Penalty on schoolmasters not repairing to church.

By the 23 Eliz. c. 1, if any person shall keep a schoolmaster, who shall not repair to church, or be allowed by the bishop, he shall forfeit 10*l.* a month, and the schoolmaster shall be imprisoned for a year.

13 & 14 Car. 2, c. 4.

Schoolmasters to conform to the liturgy of the Church of England.

By the 13 & 14 Car. II. c. 4, every schoolmaster keeping any public or private school, and every person instructing or teaching any youth in any house or private family as a tutor or schoolmaster, shall, before his admission, subscribe before the ordinary the declaration of conformity to the liturgy of the Church of England, on pain of being disabled to hold the said school, and *ipso facto* deprived of the same. And every such school shall be void, as if such person so failing were naturally dead. And if any schoolmaster or other person instructing or teaching youth in any private house or family as tutor or schoolmaster shall teach any youth as tutor or schoolmaster before license obtained from the bishop or ordinary of the diocese, and before such subscription as aforesaid, he shall for the first offence be imprisoned three months, and for the second and every other offence be imprisoned three months, and forfeit 5*l.* (Sects. 8, 9, 11).

19 Geo 3, c. 44

To take the oaths prescribed by the Toleration Act.

But by stat. 19 Geo. III. c. 44, s. 2, no dissenting minister, nor any other Protestant dissenting from the Church of England who shall take the aforesaid oaths, and make and subscribe the above-mentioned declaration against popery, and the declaration hereinbefore mentioned, shall be prosecuted in any court whatsoever for teaching and instructing youth as a tutor or schoolmaster.

Not to hold the mastership of any college or school of royal foundation.

Sect. 3. Provided, that this shall not extend to the enabling of any person dissenting from the Church of England to hold the mastership of any college or school of royal foundation, or of any other endowed college or school for the education of youth, unless the same shall have been founded since the first year of King William and Queen Mary, for the immediate use and benefit of Protestant dissenters.

Form of oaths.

The forms of the said oaths and declaration are inserted under title "*Oaths,*" *Vol. V.*

Forms.

(1). Certificate of having taken the oaths before a justice, pursuant to 52 Geo. 3, c. 155 (*a*).

County of { *I, J. P., Esquire, one of her Majesty's justices of the peace for the said county of , do hereby certify that C. D. of , in the county of , did this day appear before me, and did make, and take, and subscribe the several oaths and declaration contained and specified in an act made in the fifty-second year of the reign of King George the Third, in-*

(*a*) The act gives this form.

tituled "An Act to repeal certain acts, and amend other acts relating to religious worship and assemblies, and persons teaching or preaching therein." Witness my hand, this day of , in the year &c. J. P.

Forms.

See form of conviction for holding a meeting in unregistered house, &c. on 22 Car. II. c. 1, *ante*, 258.

(2). Conviction.

[Commencement as usual, as *ante*, (No. 1.)] *on the day of , A. D. , at the parish of in the said county, did willingly, and of purpose, maliciously and contemptuously come into a certain congregation of Protestant dissenters, then and there assembled for the worship of Almighty God, in a certain meeting-house there situate, then and long before certified, registered, and recorded, according to the direction of the statute in that case made and provided, and did then and there wilfully, willingly, and of purpose, maliciously and contemptuously disquiet and disturb the said congregation, the doors of the said meeting-house, where the said congregation were so assembled, not being then locked, barred, or bolted. And you the said keeper, &c.* [as *ante*, (No. 1.) to the end].

(3) Commitment for disturbing a congregation of dissenters during divine service.

—— (venue.) *THE jurors for our Lady the Queen upon their oath present, that A. B., late of the parish of in the county of , labourer, and C. D., late of the same place, labourer, on the day of , in the year of the reign of our Lady the now Queen Victoria, with force and arms, at the parish aforesaid, in the county aforesaid, did, during the time of divine worship, unlawfully, wilfully, maliciously, and contemptuously disquiet and disturb a certain congregation of Protestant dissenters from the Church of England, being then and there lawfully assembled for the purpose of religious worship in a certain chapel and premises situated and being in the parish aforesaid, in the county aforesaid, the said chapel being then and there duly certified and registered pursuant to the statutes in such case made and provided, in contempt of public worship, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen her crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. and C. D. afterwards, to wit, on the day and year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, did, during the time of divine worship, unlawfully, wilfully, maliciously, and contemptuously disquiet and disturb a certain other congregation of Protestant dissenters from the Church of England, being then and there duly and lawfully assembled, for the purpose of religious worship, in a certain meeting-house and premises situate and being in the parish aforesaid, in the county aforesaid, the said last-mentioned meeting-house being then and there duly certified and registered pursuant to the statutes in such case made and provided, in contempt of public worship, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.*

(4). Indictment for disturbing dissenting congregation, on statute 52 Geo. 3, c. 155 (a).

Second count.

Distress for Rent (b).

A DISTRESS is the taking of a personal chattel out of the possession of the wrong-doer into the custody of the party injured, to procure

What is.

(a) See other forms, 2 Chit. C. L., Archb. C. L. See *R.* v. *Cheere*, 4 *B. & Cress.* 902.

(b) A very considerable portion of this title may not be applicable to a work of this nature: still a great portion of it is; and the rest being cursorily considered in prior editions, it is thought fit to enlarge thereon in the present one, especially on a subject of such general interest and importance. As to Distresses in general, *see Bradby on Distresses, Gilbert on Distresses, Com. Dig. Distress, Bac. Abr. Distress, Wilkinson on Replevin.*

Distress for Rent.

satisfaction for the wrong committed, and is of two kinds, either for cattle trespassing and doing damage (*a*), or for non-payment of rent or other duties.

Origin of distress for rent.

The remedy for recovering rent by way of distress seems first to have come over to us from the civil law: for anciently, in the feudal law, not paying attendance at the Lord's courts, or not doing the feudal service, was a forfeiture of the estate. But these feudal forfeitures were afterwards turned into distresses, according to the pignorary method of the civil law; that is, the land that is let out to the tenant is hypothecated, as a *pledge* in his hands, to answer the rent agreed to be paid to the landlord, and the whole profits arising from the land are liable to the lord's seizure for the payment and satisfaction thereof. (*Gilb.* 2). The distress, being a pledge, could not be sold till the 2 Will. & Mary, c. 5, *post*, 301.

Formerly only a pledge without power of sale.

The subject of the present title will be treated of in the following order:—

I. *When in general allowed, and who may Distrain*, 269.

[2 Will. sess. 1, c. 5; 4 Geo. II. c. 28; 1 & 2 Geo. IV. c. 23; 6 Geo. IV. c. 74; 7 Geo. IV. c. 57.]

II. *What may be Distrained*, 276.

[2 Will. sess. 1, c. 5; 11 Geo. II. c. 19; 56 Geo. III. c. 50.]

(*a*) A man may distrain beasts *damage feasant*, that is, doing damage or trespassing upon his land; for all chattels whatever are distrainable *damage feasant*, it being but natural justice that whatever doth the injury should be a pledge to make compensation for it. (*Gilb. Dist.* 24, 38; 3 *Bla. Com.* 6). If a man take cattle, and put them into the land of another man, the tenant of the land may take these cattle damage feasant, though the owner was not privy to the cattle being damage feasant, and he may keep them against the true owner, till satisfaction of the damages. (1 *Roll. Abr.* 655; *Roll. Rep.* 449). If a man come to distrain, and see the beasts in his ground, and the owner chase them out on purpose before the distress taken, yet the owner of the soil cannot distrain them. (*Co. Lit.* 161; 2 *Bac. Abr.* 354). For distress damage feasant is the strictest distress that is, and the thing distrained must be taken in the very act; for if the goods are once off, though on fresh pursuit, the owner of the ground cannot take them. (*Vaspor* v. *Edwards*, 12 *Mod.* 661). If ten head of cattle were doing damage, a man cannot take one of them and keep it till he be satisfied for the whole damage, but for its own damage only; but he may bring an action of trespass for the rest. (*Vaspor* v. *Edwards*, 12 *Mod.* 660). If a man hath common for ten cattle, and he puts in more, the surplusage above ten may be taken damage feasant. (1 *Roll. Abr.* 665). But this must be where the number is absolutely certain, as for ten, twenty, or thirty cattle, without any relation to the quantity of land, and not where he claims for so many cattle for such a number of acres; for in the former case the overcharge is clear and self-evident, but in the latter it depends upon the number of acres, and requires a medium to determine the number of cattle; that is, an admeasurement of the land. For where the question depends upon a collateral fact, or upon a matter of judgment, the party interested can never be a competent judge in his own cause, And the court said the right of distraining seemed to turn upon this, that wherever there is a *colour of right* for putting in the cattle a commoner cannot distrain, because it would be judging for himself in a question that depends upon a more competent inquiry: but where cattle are put upon the common *without* any colour or pretence of right, the commoner may distrain them; and therefore he may distrain the cattle of a stranger. (*Hall* v. *Harding*, 4 *Burr.* 2426; 1 *Blac. Rep.* 673, S. C.) Where cattle have trespassed on a party's land, it is not advisable to distrain where his title to the *locus in quo* is doubtful; the best course is to proceed by action. (1 *Saund.* 346 e, *n.*)

III. *At what time the Distress shall be taken, and Statute of Limitation,* 282.
[3 & 4 Will. IV. c. 27, s. 2.]

IV. *Where the Distress shall be made,* 282.
[52 Hen. III. c. 51; 9 Ed. II. c. 9; 11 Geo. II. c. 19.]

V. *Goods fraudulently conveyed off Premises,* 283.
[11 Geo. II. c. 19.]

VI. *Manner of taking the Distress, and what a taking.* 289.

VII. *When a Party may Distrain Twice,* 290.
[17 Car. II. c. 7.]

VIII. *Distress must be reasonable, and not for more Rent than is due,* 291.
[52 Hen. III. c. 4.]

IX. *When taken, how to be proceeded in till Sale,* 293.
[52 Hen. III. c. 4; 1 & 2 P. & M. c. 12; 11 Geo. II. c. 19; 5 & 6 Will. IV. c. 59.]

X. *Replevying Distress,* 297.
[1 & 2 P. & M. c. 12; 11 Geo. II. c. 19.]

XI. *Sale and Costs of Distress,* 301.
[2 W. & M. sess. 1, c. 5; 1 & 2 P. & M. c. 12; 57 Geo. III. c 93; 7 & 8 Geo. IV. c. 19.]

XII. *Irregularity of Proceedings and tender of Amends,* 306.
[11 Geo. II. c. 19.]

XIII. *Rent in case of Extent, Execution, Bankruptcy, or Insolvency,* 308.
[8 Anne, c. 14; 6 Geo. IV. c. 16; 7 Geo. IV. c. 57.]

XIV. *Rent, how far Recoverable by Executors or Administrators,* 310.
[32 Hen. VIII. c. 37; 4 & 5 Will. IV. c. 22.]

XV. *Rescous or Pound Breach,* 312.
[2 W. & M. sess. 1, c. 5; 3 Geo. IV. c. 126.]

XVI. *Rent on Tenant holding over,* 313.
[8 Anne, c. 14; 4 Geo. II. c. 28; 11 Geo. II. c. 19; 1 Geo. IV. c. 87.]

XVII. *Forms,* 314.

[For other matters relative to landlord and tenant, and some of which were treated of under this title in prior editions, see "*Landlord and Tenant,*" *Vol. III.*]

I. When a Distress for Rent allowed, and who may Distrain.

Nature of Rents.

It may now be laid down as an universal principle, that a distress may be taken for any kind of *rent* in arrear, the detention whereof beyond the day of payment is an injury to him that is entitled to receive it. (*Woodf.* 356; 3 *Bla. Com.* 6).

4 Geo. 2, c. 28.

By the common law a distress could not lie for rent-seck. However, by stat. 4 Geo. II. c. 28, s. 5, the like remedy may be had by distress, impounding, and sale, in cases of rent-seck, rents of assize, and chief rents, as in case of rents reserved upon lease.

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Out of personalty.

No distress can be taken for a rent reserved on a letting of mere *personal* property; (5 *Co.* 17; *Bally* v. *Wells*, 3 *Wils.* 27); and where land itself is not demised, but the mere *use* of it, a distress for rent thereon cannot be made under such a demise; (*Buzzard* v. *Capel*, 8 *B. & Cres.* 141; 2 *M. & R.* 197); for a *rent* cannot issue out of a privilege or easement. (*Ib.*) A distress may be made for rent of a ready-furnished house or lodging, because it is then considered that the rent issues out of the principal, the real property demised. (*Newman* v. *Anderton*, 2 *New Rep.* 224; and see *Farewell* v. *Dickenson*, 6 *B. & Cres.* 251; *Philpott* v. *Dobbinson*, 6 *Bing.* 105; 3 *M. & P.* 320).

Out of incorporeal hereditaments.

Rent cannot properly be reserved out of incorporeal hereditaments, as commons, tithes, or tolls. (*Co. Lit.* 47 a; and see *Bird* v. *Higgenson*, 2 *Ad. & Ell.* 696; S. C. *in error*, 6 *Ad. & Ell.* 824).

Out of lands and incorporeal hereditaments.

Where a valid demise is made of lands and incorporeal hereditaments together at an entire rent, the rent issues solely out of the land in point of remedy, but out of both in point of render. And in such a case, it would seem, a distress might be made upon the land for the entire rent. (19 *Vin. Ab.* 122, *Reservation*, (O); *Doubitofte* v. *Curteene*, *Cro. Jac.* 452). But where lands and tithes were demised by parol at an entire rent, it was held, that the demise being void as to the tithes, the lessor could not distrain for the whole rent, or any part of it, on the land only. (*Gardiner* v. *Williamson*, 2 *B. & Ad.* 336; *Bird* v. *Higgenson*, 6 *Ad. & Ell.* 824).

Out of land in possession and reversion.

If a lease be made of land in possession, and other land in reversion, rendering rent, the rent issues out of both; and, before the reversion falls in, a distress may be taken for the whole rent on the land in possession. (18 *Vin. Ab.* 480, *Rent*, (H 1).

Rent must be in arrear.

The distress for rent must be for rent in *arrear;* therefore it may not be made on the same day on which the rent becomes due; for if the rent be paid in any part of that day, whilst a man can see to count money, the payment is good. (See 1 *Saund.* 287, n. 17; 2 *Saund.* 284, n. 2).

Distress after tender of rent is invalid.

It must not be after tender or payment of the entire rent due; for if the landlord come to distrain the goods of his tenant for rent behind, before the distress, the tenant may upon the land tender the arrearages, and if after that a distress be taken it is wrongful; and if the landlord have distrained, if the tenant, before the impounding thereof, tender the arrearages and expenses, the landlord ought to deliver the distress, and if he do not, the detainer is unlawful. Even so it is, in case of a distress by damage feasant (or damage done by cattle trespassing); the tender of amends before the distress maketh the distress unlawful; and after the distress, and before the impounding, the detainer unlawful. (2 *Inst.* 107; 3 *Stark.* 171; *Vertue* v. *Beasley*, 2 *M. & M.* 21). But in this case, although the owner tender sufficient amends, after the impounding, yet he cannot take his beasts out of the pound, if the amends be refused; but he must replevy; and if it be found at the trial that the amends were not sufficient, the person on whom they trespassed shall have damages; if the amends tendered were sufficient, then the owner of the beasts shall have damages. (*D. & St.* 112; 17th ed. 193, 194; *Vin. Ab. Repl.* 22). If a distress be made after a sufficient tender and no subsequent demand, an action of trespass or on the case may be maintained. *Branscombe* v. *Bridges*, 1 *B. & C.* 145; *Vertue* v. *Beasley*, 2 *M. & M.* 21). A tenant distrained upon for arrears of rent, tendering the amount of the rent and the expenses of the distress before the goods are impounded, though after the distress, may maintain trespass for removing the goods, or continuing in possession, and tender to the bailiff authorized to distrain is sufficient. (*Ladd* v. *Thomas*, 12 *Ad. & Ell.* 117). Replevin also lies for the detention of the goods after tender of rent and before impounding, such detention being equivalent

Detainer is unlawful, if tender made before impounding.

to a new taking, and the tenant may plead the tender in bar. (20 *Vin. Ab. Tender*, (S.), *pl.* 1; *Gilbert*, 85; *Evans* v. *Elliott*, 5 *Ad. & Ell.* 142).

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Tender after the impounding makes neither the distress nor the detention unlawful, for then it comes too late, because then the cause is put to the trial of the law, there to be determined. (*Pilkington's case*, 5 *Co.* 76; *Anscombe* v. *Shore*, 2 *Camp.* 285; 1 *Taunt*, 261, S. C.; *Sheriff* v. *James*, 1 *Bing.* 341; 8 *Moore*, 334, S. C.; *Ladd* v. *Thomas*, 12 *Ad. & Ell.* 117; *Thomas* v. *Harris*, 1 *Scott, N. R.* 524; *Ellis* v. *Taylor*, 8 *M. & W.* 415). And no action lies for selling the distress, notwithstanding such tender. If, therefore, such a tender be refused, the owner should replevy, and after the law has determined it, and the avowant has a return irreplevisable, yet if the plaintiff makes him a sufficient tender, he may have an action of detinue for the detainer after, or he may, upon satisfaction made in court, have a writ for the re-delivery of his goods. (8 *Co.* 147 a).

Tender after impounding is too late.

If the landlord distrain for two rent-days' arrear, and the tenant offer the one, the lord is bound to receive it; and if he distrain, he does a tort. (20 *Vin. Ab.* 182, *Tender*, (E.), *pl.* 2).

By special agreement, or local custom, a distress may be made before the rent falls due. (*Gilb.* 56; *Harg. Co. Lit.* 47 b., n. 6).

Special agreement or custom to distrain before rent due.

Where a landlord takes a less rent than that agreed on for a length of time, he cannot in general distrain for that not actually paid. Where a landlord's receiver allowed the tenant to make a deduction in respect of a payment for land-tax every year for seventeen years greater than the landlord was liable to pay, the landlord knowing, or having the means of knowing, all the facts, it was held that he could not distrain for the amount erroneously allowed, though the receipt given every year shewed the amount paid and the amount deducted. (*Bramston* v. *Robins*, 4 *Bing.* 11; 12 *Moore*, 68).

Taking less for long time.

Where A. took a lease in writing, in his own name, of certain premises, and subsequently occupied part only, and paid rent for so much as he occupied to B., from whose agent he took the lease:—Held, that B. might distrain for the part so occupied, and that A. was precluded in replevin from disputing his title. (*Clarke* v. *Waterton*, 8 *Car. & P.* 365).

Where a landlord reserved rent, payable quarterly, or half-quarterly, if required. Having received the rent quarterly for a twelvemonth; held, that he could not, without notice, distrain for a half-quarter's rent. (*Mallam* v. *Arden*, 10 *Bing.* 299; 3 *M. & Scott*, 793).

Rent reserved quarterly or half-quarterly if required.

The taking even of a bond (3 *Price*, 572), or a bill of exchange or note, and giving a receipt (*B. N. P.* 82), for the rent, does not, until payment, preclude the landlord from distraining. But under circumstances the taking of a bill might suspend the right of distress. (See *Davis* v. *Gyde*, 2 *Ad. & Ell.* 623). A judgment for the rent or security given for it would preclude him. (*B. N. P.* 82). An agreement to take interest on rent in arrear does not so preclude him. (*Skerry* v. *Preston*, 2 *Chit. Rep.* 245).

Taking security for rent.

A tenant gave a bill of sale to a creditor, under which his goods (including certain eatage) were about to be sold, and the landlord, before the sale took place, put in a distress; whereupon it was agreed that the sale by the creditor should proceed, and that the landlord should be paid his arrears out of the proceeds of the goods and eatage. The plaintiff having purchased the eatage at the sale, put in his cattle to depasture it, and the amount of the sale not being sufficient to cover the arrears of rent, the landlord distrained again and took those cattle as a distress: Held, (*Parke*, B., diss.), that a contract was to be implied on the part of the landlord not to distrain the cattle of the purchaser of the eatage. (*Horsford* v. *Webster*, 1 *C., M. & R.* 696).

Agreement not to distrain.

A landlord has no right to distrain unless there be an *actual demise* to

There must be an actual demise.

1. *When allowed.*

the tenant at a *fixed rent*. And therefore where a tenant was in possession under a memorandum of an agreement to let on lease, with a purchasing clause for twenty-one years, at the clear net rent of 63*l.*, the tenant to enter at any time on or before a particular day, it was held, that this only amounted to an agreement for a future lease, and that no lease having been executed, and no rent subsequently paid, the landlord was not entitled to distrain. (*Dunk* v. *Hunter*, 5 *B. & Ald.* 322). And so where a party is in possession under an agreement for a lease, and no implied tenancy can be raised from other circumstances, the owner cannot during the first year distrain for non-payment of rent. (*Hegan* v. *Johnson*, 2 *Taunt*, 148; and see *Regnant* v. *Porter*, 7 *Bingh.* 451; 5 *M. & P.* 370; *Gardiner* v. *Williamson*, 2 *B. & Ad.* 336). But *per Bayley*, J., in the case of *Dunk* v. *Hunter*, the owner's remedy is by action for use and occupation.

Where demise void in part.

If a demise be made of lands, or of lands and incorporeal hereditaments, and rent is reserved out of the whole, in case the demise be void as to part of the principal subject-matter demised, no distress can be made for the whole rent or any part of it. (*Gardiner* v. *Williamson*, 2 *B. & Ad.* 336; *Neale* v. *Mackenzie*, 1 *M. & W.* 747; and see *Bird* v. *Higginson*, 6 *Ad. & Ell.* 824).

Rent must be fixed and certain.

So as Lord *Coke* says (*Co. Lit.* 96 a), it is a maxim in law, that no distress can be taken for any services that are not put into certainty, nor can be reduced to any certainty, for *id certum est quod certum reddi potest*; but yet, in many cases, there may be certainty in uncertainty. Therefore if a man hold land, paying so much per acre, although in the terms of the demise the number of acres be not fixed, the lord may distrain. (*Vin. Ab. Distress*, (E.)

Where plaintiff entered a farm under an oral agreement for a lease of ten years, though the *time* of paying the rent was settled, but it did not appear what was the *amount* to be paid, and the lease was never granted, but plaintiff occupied according to the terms of the proposed lease, and paid a certain rent for two years, it was held the lessor might distrain. (*Knight* v. *Bennett*, 3 *Bingh.* 361; 11 *Moore*, 277, S. C.)

Where the plaintiff, who had entered on premises under an agreement for a lease, admitted a charge of half a year's rent in an account between him and his landlord, it was held that this went to make him a tenant from year to year and liable to distress. (*Cox* v. *Bent*, 5 *Bingh.* 185; 2 *M. & P.* 281; and see *Mann* v. *Lovejoy*, 1 *Ry. & M.* 355).

But where a tenant entered under an agreement containing stipulations for a lease at 25*l.* a year, and an engagement by the landlord to complete certain erections. The erections were never completed, and the tenant never paid any rent; but being called on after some years' occupation, said he was ready to pay what was due, provided the erections were completed, and an allowance made him for the expense of some repairs; held, that a demise at a rent certain could not be implied, so as to entitle the landlord to distrain. (*Regnart* v. *Porter*, 7 *Bingh.* 451; 5 *M. & P.* 370, S. C.)

A tenant agreed verbally to take a house furnished, the rent payable quarterly and in advance. The house was furnished only in part, but the landlord promised that it should be completely furnished, not specifying any time, and the tenant was let into possession within a month after the treaty. After the expiration of a quarter, the landlord distrained for rent. The furniture not having been sent in as proposed, the tenant brought trespass:—Held, that it was a question for the jury, whether the agreement was absolute, or on condition only of the furniture being sent in; that there was evidence for the jury to find that it was conditional, and therefore that the distress was not justifiable. (*Mechelan* v. *Wallace*, 7 *Ad. & E.* 54, (n).)

Where an estate has been let without in any way fixing the amount of rent, the only remedy for such rent is by action.

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One who becomes entitled to a part of the reversion may distrain, though his proportion of the rent has not been fixed.

But it seems that, after a tenancy has been created and the rent fixed, the assignee of the reversion of part of the demised premises might distrain for his proportion of the rent, though the amount of such proportion may not have been fixed previously. And, in replevin, such assignee may avow at common law, stating the facts specially, and leaving the apportionment of the rent to be made by the jury; or he may avow in the general form given by the statute 11 Geo. II. c. 19, as upon a holding at a certain rent; and if he avow under the statute for more than his proportion of the rent, the judge may direct the avowry to be amended. (*Roberts* v. *Snell*, 1 *Man. & G.* 577). One of two tenants in common, to whom the reversion has been devised, may also distrain for his portion of the rent. (*Harrison* v. *Barnby*, 5 *T. R* 246).

Double rent or value.

There cannot be a distress for double *value* under the 4 Geo. II. c. 28, but there may be for double *rent* under the 11 Geo. II. c. 19, s. 18. (See *Timmins* v. *Rowlinson*, 3 *Burr.* 1603, 1608; *Bla. Rep.* 533, S. C.; *Jenner* v. *Clegg*, 1 *Mood. & Rob.* 213).

Landlord must be entitled to reversion.

The landlord must at the time of the distress be entitled to the *legal reversion* in the premises in respect of which the rent is due. The common law only allowed distresses when the relation of landlord and tenant subsisted, and when consequently feudal service could be performed. If therefore the landlord, before or after the rent become due, and before payment, either by his own conveyance to another or otherwise, has no longer the legal estate in the premises, he cannot distrain. (*Gilb. Act. Debt*, 411; *Bro. Debt, pl.* 93; *Vaughan*, 40; *Bac. Ab. Distress*, (A)). And where a landlord demises his *whole* interest to another he cannot distrain. Therefore, where an avowant, who had a term which expired on the 11th November, 1826, let the premises orally from the 11th September to the 11th November in that year for 270*l.*, payable immediately, it was held that this was a lease of which parol evidence might be given, and not an assignment requiring a writing, but that being a demise of the whole of the avowant's interest, he had no right to distrain. (*Preece* v. *Corrie*, 5 *Bingh.* 24; 2 *M. & P.* 57, S C.) When a lessor has not the legal estate or reversion, he should reserve a power to distrain, which will entitle him to do so. (*Co. Lit.* 47 a; 5 *Co.* 3; and see *Brawley* v. *Wade*, 1 *M'Clel.* 664; *Pluck* v. *Digges*, 2 *Dow. & Clarke*, 180). It was considered in *Curtis* v. *Wheeler*, (1 *M. & M.* 493), that a tenant from year to year, under a letting for a year, or from year to year, has a reversion which entitles him to distrain. Where A., being seised in fee, leased premises to B. for sixty-one years, and afterwards granted a lease to C. of the same premise, to commence at the expiration of the sixty-one years:—Held, that by the lease to C., A. did not part with his reversion, so as to disentitle him to distrain for rent due from B. under his lease. (*Smith* v. *Day*, 2 *M. & W.* 684).

And see further as to who are considered reversioners so as to entitle them to distrain. *Isherwood* v. *Oldknow*, 3 *M. & Sel.* 382; *Rogers* v. *Humphreys*, 4 *Ad. & Ell.* 299; *Bringloe* v. *Goodson*, 6 *Scott*, 502; 4 *Bing. N. C.* 726, S. C.

Reversion may be severed.

The reversion may be severed and devised or granted away so as to subject the lessee to separate distresses by different grantees or devisees. (*Co. Litt.* 148 a; 2 *Inst.* 504; *Bliss* v. *Collins*, 5 *B. & Ald.* 876; *Roberts* v. *Snell*, 1 *M. & G.* 577; *Rivis* v. *Watson*, 5 *M. & W.* 255).

A tenancy must subsist.

When a lease or tenancy has expired, so that the party holding possession is no longer a tenant, the landlord cannot in general distrain, because of the want of a *subsisting tenancy*. It is prudent and not unusual therefore to provide that the last quarter's rent shall be paid at a day prior to the determination of the lease, so as to enable the landlord to distrain before the tenant's removal. (*Co. Lit.* 47 b.) This, however, is in many cases rendered superfluous by the 8 Anne, c. 14, (which we shall hereafter notice), which provides that if a person retain possession of the estate after the expiration of his tenancy, the landlord, *if his interest continue*, may distrain within six months. (See *post*, 313). And

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besides this, the 11 Geo. II. c. 19, s. 18, (which we shall also hereafter notice), enables a landlord to distrain for double rent if a tenant do not deliver up possession after the expiration of his own notice to quit.

If also by agreement or custom the tenant has an away-going crop, and *right to hold over* to clear the same, the landlord may, during such *excrescence* of the term distrain at common law. (*Bevan* v. *Delahay*, 1 *Hen. Bla.*; *Wigglesworth* v. *Dallison*, 1 *Dougl.* 201; *Knight* v. *Bennett*, 3 *Bingh.* 364; 11 *Moore*, 277, S. C.)

Distress after ejectment.

A landlord, who has obtained judgment in ejectment against the occupier of his land, cannot afterwards distrain on him for the rent. (*Bridges* v. *Smith*, 5 *Bingh.* 410; 2 *M. & P.* 470). But where there has been no judgment or actual eviction of the tenant, it seems a distress might be made. (*Rogers* v. *Humphreys*, 4 *Ad. & Ell.* 299).

Inclosure acts.

By stat. 1 & 2 Geo. IV. c. 23, landlords, or persons acting under their orders, may enter upon land allotted to them under any inclosure act, and seize and distrain for rent, notwithstanding the commissioners' award shall not have been executed. (See further, "*Inclosure*," *Vol. III.*)

Devisee.

A devisee may distrain for rent devised to him out of lands if the land is charged with a distress, and not otherwise. (*Shep. Touch.* 439).

Executors.

As to executors distraining, see *post*, 310.

Mortgagee.

A mortgagee, after notice given of the mortgage to the tenant in possession under a lease *prior* to the mortgage, may distrain for the rent in arrear at the time of the mortgage, (although he was not in actual seisin of the premises, or in receipt of the rents and profits, at the time it became due), as well as for rent which may accrue after such notice, the legal title to the rent being in the mortgagee. (*Moss* v. *Gallimore*, *Dougl.* 278). But where the tenant came into possession under the mortgagor *after* the mortgage, the mortgagee cannot distrain unless the relation of landlord and tenant has been created between the parties by mutual consent, and a notice from the mortgagee to pay the rent to him will not without the assent of the tenant produce such a relation. (*Rogers* v. *Humphreys*, 4 *Ad. & Ell.* 299; *Evans* v. *Elliot*, 9 *Ad. & Ell.* 342; *Brown* v. *Storey*, 1 *Scott, N. R.* 9).

Grantee of rent-charge.

A rent-charge granted for life by a tenant for years is not void, but is good as a chattel interest. And the goods of a stranger not shown to hold the premises by title paramount to the rent-charge (as by a prior demise) may be distrained for the arrears. (*Saffery* v. *Elgood*, 1 *Ad. & E.* 191; *Johnson* v. *Faulkner*, 2 *Gale & D.* 184). A rent-charge may be divided by will, or by deed operating under the statute of uses, or, since the stat. 4 Anne, c. 16, s. 9, by a conveyance of any kind, so as to make the tenant liable, without attornment, to several distresses by the devisees or cestuis que use. (*Rivis* v. *Watson*, 5 *Mee. & W.* 255).

Joint tenants.

One *joint tenant* may distrain alone, but then he must avow in his own right and as bailiff to the other. (*Pullen* v. *Palmer*, 5 *Mod.* 73).

Tenants in common.

One joint tenant may, without the assent of his fellows, appoint a bailiff to distrain for rent due to all the joint tenants. (*Robinson* v. *Hofman*, 4 *Bingh.* 562; 1 *M. & P.* 474; 3 *C. & P.* 234. *See* 3 *Chit. Pl. 6th ed.* 959). One *tenant in common* may distrain for his share of the rent upon the terre-tenant holding under him and another tenant in common, and he may do so where such tenant has paid the whole rent to the other tenant in common after notice not to pay it. (*Harrison* v. *Barnby*, 5 *T. R.* 246).

Co-heirs in gavel kind.

One of several co-heirs in gavelkind may distrain for rent due to him and his companions without their actual authority. (*Leigh* v. *Shepherd*, 2 *Brod. & B.* 465; 5 *Moore*, 297, S. C.)

Bankruptcy or insolvency.

As to distresses in case of bankruptcy or insolvency, see *post*, 308.

Receiver.

A receiver appointed by the Court of Chancery may distrain for rent where he sees it necessary, and need not apply first to that court for a particular order for the purpose. He should distrain in the name of

the person who had the right. (*Pitt* v. *Snowden*, 1 *Atk.* 750; *Bennett* v. *Robins*, 5 *C. & P.* 379).

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With respect to a private receiver or collector, it has been held that an authority to tenants "to pay rent to J. S., whose receipt shall be their discharge," does not entitle him to distrain, although he is to receive the rent for his own benefit. (*Ward* v. *Shaw*, 9 *Bingh.* 608; 2 *M. & Sc.* 756). But it is apprehended that under an authority to *collect*, the collector might distrain.

Power to distrain under an award.

Avowry for rent in arrear under 11 Geo. 2, c. 19, that the plaintiffs held the premises in which &c. as tenants to A. Plea in bar, that A. demised the premises in which &c. to the plaintiffs for all the residue of his interest in the same, and that A. had not any reversionary interest in the same. The defendant replied—a power of distress given to A. by the award of an arbitrator to whom certain disputes, and all matters in difference between him and the plaintiffs, had been referred. The plaintiffs rejoined, that it was not referred to the arbitrator, whether the defendant A. should have a power of distress; to which the defendant demurred specially:—Held, that the plea in bar was good, and that the replication was bad, in not averring that the arbitrator had authority to confer a power of distress, or that the right to distrain was one of the matters in difference. (*Pascoe* v. *Pascoe*, 3 *Bing. N. C.* 898; 5 *Scott*, 117).

Bailiffs.

The lessor or landlord himself may make the distress; in general, however, he employs some third person, called a "bailiff." The authority given on this employment may be by parol, but in general it is in writing (usually called a "warrant of distress"), and it is best it should be so.

Their authority.

The authority should be given by all the parties entitled to distrain. 1 *Leon.* 50).

A man, indeed, may distrain for another person without any express authority; if he afterwards obtain the assent of such person, such assent will have relation to the time of the distress taken. (*Gilb. Distress*, 32).

A warrant to distrain upon goods was originally addressed by the defendant to the plaintiffs or their agent, and the plaintiffs' clerk struck out the plaintiffs' name, and inserted that of one W., and the distress having been made by W., the defendant had notice of that fact, and had several communications with W. as to the disposing of the goods:—It was considered that the employment of W. was sufficiently authorized by the defendant, and that the alteration did not render the warrant void. (*Toplis* v. *Grane*, 7 *Scott*, 620; 5 *Bing. N. C.* 636).

A warrant of distress was produced by the plaintiff, purporting to be issued by the solicitors of the landlords of certain property, the writing being in the hand of a junior partner of the firm. The solicitors had, on previous occasions, issued distress warrants in respect of other property of the landlords; this was held not to be sufficient evidence of an authority by the landlords to distrain. (*Jones* v. *Buckley*, 2 *Jur. N. P. C.* 204).

To trespass for taking the plaintiff's horse, the defendant pleaded, 1st, not guilty; and, 2ndly, that the horse was *damage feasant* on his land. The horse was proved to have been wrongfully distrained by the servant of the defendant on the highway, and not on his land. No *primâ facie* case was considered to have been made out, that the defendant had authorized the distress in question, by proof of his having on other occasions authorized his servant to distrain cattle *damage feasant* on his land; and that he had not adopted the act of his servant, by pleading a justification of it. (*Lyons* v. *Martin*, 8 *Ad. & Ell.* 513).

13 Edw. I, c. 37.

The statute 13 Edw. I. c. 37, section 2, which enacts, that no distress shall be taken, except by bailiffs "sworn and known," does not apply to distresses taken for rent in arrear. (*Begbie* v. *Hayne*, 2 *Scott*, 193).

2 *What may be distrained.*

Distraining where no rent is due.

By stat. 2 W. & M. sess. 1, c. 5, s. 5, if any distress and sale shall be made for rent in arrear and due when none is in truth due, the owner shall recover double value with full costs. The owner may sue either in trespass or case.

Rescue.

And if the distress be taken of goods without cause, the owner may make *rescous:* but if they be distrained without cause and *impounded*, the owner cannot break the pound and take them out, because they are in the custody of the law. (1 *Inst.* 47; *post*, 312).

II. What may be Distrained.

All goods on premises.

It may be laid down as a general rule, that all chattels personal the landlord finds on the premises, whether they in fact belong to the tenant, a lodger, or other stranger, are liable to be distrained, unless particularly protected or exempted. (*See* 3 *Bla. Com.* 7).

Valuable property.

But a distress for rent must be of a thing whereof a valuable property is in somebody; and therefore deer, bucks, does, conies, and the like, that are *feræ naturæ*, cannot be distrained. (1 *Inst.* 47). But deer in an inclosed ground (not an ancient park) may be distrained for rent. (*Davies* v. *Powell*, *Willes*, 46). So at the present day may dogs: a man may have a valuable property in a dog. (*Id.* 48; 1 *Saund.* 84. *See post*, *tit.* "*Dogs*").

Things in use.

Whatever is in a man's *present use or occupation*, is during that time privileged from distress; as a horse on which he is riding, or an axe with which he is cutting wood. (*Co. Litt.* 47 a). This rule extends even to the case of a distress damage feasant, and although the thing distrained upon be used for the purpose of doing damage; for though it is said to have been formerly held, that horses might be severed from the plough, or a horse taken damage feasant and impounded, although a rider were upon him; such distress is now determined to be unlawful, as it would be liable to lead to a breach of the peace. (*Vide Hargrave's note* (12) *on Co. Litt.* 47 a, and 6 *T. R.* 139; *Field* v. *Adams*, 12 *Ad. & Ell.* 649). So nets or ferrets cannot be taken damage feasant in a warren, if they are in the hands of a person using them. And although it was formerly considered that a cart and horses, when carrying corn or hay, might be distrained for rent-service, it *seems* now to be held that such a distress would be illegal, as being made on things in immediate use. On the same ground it has been determined that a loom cannot be distrained when in the hands of the weaver; nor wearing apparel, if in actual use; but if put off, though only for the purpose of repose, it is liable to be taken as a distress for rent. (*Baynes* v. *Smith*, 1 *Esp.* 206; *Bradby*, 207, 208). The nature of the user must be shown in pleading this exemption; for in trespass for taking a dog, where plaintiff, to a plea of distress damage feasant, replied that the dog was, at the time of distraining, in the actual possession and in the personal care of the plaintiff, and being actually used by him, it was held that the plea did not aver sufficient to privilege the dog from distress. (*Bunch* v. *Kennington*, 4 *Per. & D.* 509).

Goods of others in way of trade.

Valuable things in the way of trade are not liable to distress. As a horse standing in a smith's shop to be shod, or in a common inn; or cloth at a tailor's house, or corn sent to a mill or market. For all these are protected and privileged for the benefit of trade. (*Bradby*, 207, 208). So goods of a principal in the hands of a factor for sale, are privileged from distress for rent due from such factor to his landlord, on the ground that the rule of public convenience, out of which the privilege arises, is within the exemption of a landlord's general right to distrain, and therefore that such goods are protected for the benefit of trade. (*Gilman* v. *Elton*, 6 *Moore*, 243; 3 *B. & B.* 75, S. C.) So goods landed at a wharf and consigned to a broker, as agent of the consignor, for sale, and placed by the broker in the wharfinger's warehouse for

safe custody until an opportunity of selling them should occur, are not distrainable for rent due in respect of the wharf and warehouse, as they were brought to the wharf in the course of trade. (*Thompson* v. *Mashiter*, 1 *Bing.* 283; 8 *Moore*, 254, S. C.). Nor is a horse that has carried corn to a mill to be ground, and during the grinding is tied to the mill door, distrainable. (*Read* v. *Burley*, *Cro. Eliz.* 549, 596). Nor are goods sent to an auctioneer to be sold on premises occupied by him. (*Adams* v. *Grane*, 1 *C. & M.* 380). Nor is the carcase of a beast sent to a butcher to be slaughtered. (*Brown* v. *Shevill*, 2 *Ad. & El.* 138). Goods in possession of an innkeeper or carrier, though the carrier be not a public one, are exempt. (*Gilbourn* v. *Hurst*, 1 *Salk.* 249). 2. *What may be distrained.*

Cattle driven to a distant market, and put into land to rest for one night, cannot be distrained for rent. (*Fowkes* v. *Joyce*, 3 *Lev.* 260; 2 *Vern.* 130; 2 *Saund.* 290, n. 7; 3 *Bla. Com.* 8, *Christian's note. And see Horsford* v. *Webster*, 1 *C., M. & R.* 702).

But these general rules must be understood with some limitations. For although the goods of a guest at a public inn are privileged from distress, because such a place is *publici juris*, and all men have a right to use it without molestation; yet this exemption was held not to extend to the case of a chariot standing in the coach-house of a livery-stable keeper, for that is not a common inn, and the hire of its standing may be considered as part of the profits of the premises. (*Francis* v. *Wyatt*, 3 *Burr.* 1498; 1 *Bl. Rep.* 483, S. C.) The goods to be exempted from distress must also be within the very precincts of the inn, and not on other premises at a distance belonging to it. And even within the inn itself the exemption does not extend to the goods of a person dwelling therein as a tenant rather than a guest. (*Bradby*, 208, 209).

Moreover, although materials delivered by a manufacturer to a weaver to be by him manufactured at his own house, are privileged from distress for rent due from the weaver to his landlord; yet a frame or other machinery delivered by the manufacturer to the weaver, together with the materials, for the purpose of being used in the weaver's house in the manufacture of such materials, is not privileged unless there be other goods upon the premises sufficient to satisfy the rent due. (*Wood* v. *Clark*, 1 *C. & J.* 484; and see *Fenton* v. *Logan*, 9 *Bingh.* 676; 3 *M. & Scott*, 82).

Salt was manufactured and publicly sold at certain salt works, and carried away in boats of the purchasers, which came for the purpose of being loaded with it, into a cut or canal on the premises communicating with a public navigation. The boat of the plaintiff, an alkali manufacturer, was lying in this cut or canal for the purpose of receiving and carrying away salt bought by him for the purposes of his manufacture:—Held, (Parke, B. *dissentiente*), that the boat was not privileged from distress for arrears of an annuity issuing out of the land on which the salt works were erected, and granted by the manufacturer and seller of the salt. (*Muspratt* v. *Gregory*, 1 *M. & W.* 633, affirmed in error, 3 *M. & W.* 677).

Brewers' casks sent to a public-house with beer, and left there until the beer is consumed, are liable to be distrained for the rent of the house. (*Joule* v. *Jackson*, 7 *M. & W.* 450).

Deeds and papers of a client in possession of his attorney, in the way of his business, cannot be seized under a distress against the attorney. (*MS. Sussex Lent Assizes*, 1832). Indeed, it would seem that such chattels could not be distrained in any case. Deeds &c. in hands of attorney.

By the common law no man shall be distrained by the utensils or instruments of his trade or profession, as the axe of the carpenter, or the book of a scholar, a stocking-frame or a loom, implements of husbandry, beasts of the plough and sheep, which are all privileged from distress while in actual use, or whilst any other sufficient distress can be found on the premises. (*Co. Litt.* 47 a; *Simpson* v. *Hartopp*, *Willes*, 512; *Gorton* v. *Falkner*, 4 *T. R.* 565; and *vide* 1 *Selw. N. P.*) It Tools of trade. Beasts of plough.

2. *What may be distrained.*

should seem that if there be a reasonable ground for presuming there are not sufficient other goods, the landlord may distrain implements of trade, &c., and is not bound to sell the other goods first. (*Jenner* v. *Yolland*, 2 *Chit. Rep.* 167; 6 *Price*, 3). And the landlord may distrain beasts of the plough, &c. though there may be growing crops sufficient to satisfy the distress. (*Piggott* v. *Birtles*, 1 *M. & W.* 441). But this rule holds only in distresses for rent arrear, amerciaments, and the like; and doth not extend to cases where a distress is given in the nature of an execution by any particular statute, as for poor rates, and the like. *Anon.* 3 *Salk.* 136). In *Hutchins* v. *Chambers*, on a special verdict, several geldings were distrained for the poor rate, which were stated to be beasts of the plough and cart, when there were other goods more than sufficient to answer the value of the demand. It was objected that by stat. 51 Hen. III. s. 4, (which was in affirmance of the common law), none shall be distrained by his beasts that gaigne his land. The court were unanimously of opinion that beasts of the plough are distrainable under stat. 43 Eliz. c. 2, and such like acts of Parliament. (1 *Burr.* 579).

Things fixed to the freehold.

Furnaces, cauldrons, or other things fixed to the freehold, or the door, or windows of a house, or the like, cannot be distrained. (*Co. Lit.* 47 b; *Pitt* v. *Shaw*, 4 *B. & Ald.* 207). And this rule extends to such things as are essentially parts of the freehold, although for a time removed; therefore a mill-stone is not distrainable, though it be removed out of its proper place in order to be picked; because such removal is out of necessity, and the stone still continues part of the mill: so it is of a smith's anvil on which he works, for this is accounted part of the forge, though it be not actually fixed by nails to the shop. (*Bro. Abr. Distress, pl.* 23; *Gorton* v. *Falkner*, 4 *T. R.* 567). It is questionable whether machinery fixed by bolts to the floor of a factory can be distrained. (*Duck* v. *Braddyll*, *M'Clel.* 217; 13 *Price*, 459, S. C.)

Tenant's fixtures.

Indeed, any thing affixed, such as grates, stoves, &c., though removable by the tenant, cannot be distrained for rent. (*Danby* v. *Harris*, 1 *G. & D.* 234).

11 Geo. 2, c 19.

Cattle feeding on commons.

Growing crops, &c.

And by stat. 11 Geo. II. c. 19, s. 8, the landlord or his steward, or other person empowered by him, may take and seize any cattle or stock feeding on any common appendant or appurtenant, or belonging to the premises, corn, grass, hops, roots, fruits, pulse, or other product growing on the estate, as a distress for rent; and the same may cut, gather, make, cure, carry, and lay up when ripe in the barns or other proper place on the premises; and if there shall be no barn or proper place on the premises demised, then in any other barn or proper place which he shall procure as near as may be to the premises; the appraisement whereof shall be taken when cut, gathered, cured, and made, and not before.

Trees, &c.

The word "product" in the statute does not extend to trees and shrubs growing in a nurseryman's ground, but it is confined to products of a similar nature with those specified in that section, to all of which the process of becoming ripe, and of being cut, gathered, made, and laid up when ripe, was incidental. (*Clark* v. *Gaskarth*, 8 *Taunt.* 431; 2 *Moore*, 491, S. C.); *see also Clark* v. *Calvert*, 3 *Moore*, 96; 8 *Taunt.* 743, S. C.)

Crops, &c. seized under *fi. fa.*

Growing crops taken under a *fi. fa.* in the hands of the sheriff's vendee, are protected from the landlord's distress for rent subsequently accruing, unless perhaps allowed to remain uncut for an unreasonable time. (*Peacock* v. *Purvis*, 2 *B. & B.* 362; 5 *Moore*, 79, S. C.; *Com. Rep.* 203). And this though the provisions of the 56 Geo. III. c. 50, (*post*, 279), were not complied with. (*Wright* v. *Dewes*, 1 *Ad. & Ell.* 641).

To what persons the 11 Geo 2, c. 19, s. 8, extends.

The powers conferred by the 11 Geo. II. c. 19, s. 8, are, it seems, limited to lessors or landlords, and do not extend to the grantees of rent-charges; and, therefore, where an annuity was granted charged upon certain premises, with a power, in case the annuity should be in arrear, to enter upon the premises and distrain for the annuity and the

distress, then and there to detain, manage, sell, and dispose of in the same manner and in all respects as distresses for rents reserved upon leases for years might be detained, managed, sold, and disposed of, and as if the annuity were a rent reserved upon a lease; it was decided that growing crops could not be distrained under this power. (*Miller* v. *Green*, 2 *C. & J.* 142). As to whether persons empowered to distrain by 4 Geo. I. c. 28, s. 5, (*ante*, 270), are entitled to distrain growing crops under this statute, see *Johnson* v. *Faulkner*, 2 *Gale & D.* 184.

2. *What may be distrained.*

At common law such things only can be distrained as may be restored to the owner in the same plight as they were in at the time of taking them, and for this reason sheaves and shocks of corn were not distrainable: but by stat. 2 W. & M. sess. 1, c. 5, s. 3, persons having rent arrear on any demise, lease, or contract, may seize and secure any sheaves or cocks of corn, or corn loose or in the straw, or hay, being in any barn or granary, or upon any hovel, stack, or rick, or otherwise upon any part of the land charged with rent, and may lock up or detain the same in the place where found, in the nature of a distress, so as the same be not removed to the damage of the owner out of the place where found and seized, but be kept there (as impounded) till replevied or sold. This provision extends to corn in whatever state it may be, whether thrashed or not. (*Lutw.* 214).

2 W. & M sess. 1, c. 5.

Things not restorable in as good a plight.

Corn or hay cut.

Where an annuity was charged upon certain premises, and it was stipulated that, in case it should be in arrear, it might be lawful for the grantee to enter on the premises to distrain in the same manner as the law directs in case of rent in arrear, it was held that the grantee might, under such a stipulation and the stat. of 2 Will. & Mary, take oats and hay in stacks or trusses as a landlord, under a distress for rent, the last-mentioned statute not being confined to distresses by landlords only. (*Johnson* v. *Faulkner*, 2 *Gale & D.* 184). Persons empowered to distrain by 4 Geo. IV. c. 28, s. 5, (*ante*, 270), are entitled to the privileges conferred by this statute. (*Ib.*)

Milk, fruit, and the like, cannot be distrained, as they cannot be restored in as good a plight as when taken. (3 *Bla. Com.* 9). But it may be questionable whether now, as the distress may be sold, such things as will not injure in the five days, cannot be distrained.

Milk, fruit, &c.

For the protection of landlords, the stat. 56 Geo. III. c. 50, s. 1, enacts, that no sheriff or other officer in England or Wales, shall, by virtue of any process of any court of law, carry off, or sell or dispose of for the purpose of being carried off from any lands let to farm, any straw thrashed or unthrashed, or any straw of crops growing, or any chaff, colder, or any turnips, or any manure, compost, ashes, or seaweed, in any case whatsoever, nor any hay, grass, or vetches, nor any roots or vegetables, being the produce of such lands, in any case where, according to any covenant or written agreement entered into and made for the benefit of the owner or landlord of any farm, such hay, grass, or grasses, tares and vetches, roots or vegetables, ought not to be taken off or withholden from such lands, or which by the tenor or effect of such covenants or agreements ought to be used or expended thereon; and of which covenants or agreements such sheriff or other officer shall have received a written notice before he shall have proceeded to sale.

56 Geo 3, c. 50 Sheriff, &c not to sell or carry off straw, &c contrary to covenants.

Sect. 2 enacts, that the tenant shall give notice to the sheriff of the existence of covenants, and the sheriff to the landlord.

Notice.

Sect. 3 empowers such sheriff or other officer to dispose of the produce, subject to an agreement to expend it on the land.

Agreements.

Sect. 6. "In all cases where any purchaser or purchasers of any crop or produce hereinbefore mentioned shall have entered into any agreement with such sheriff or other officer, touching the use and expenditure thereof on lands let to farm, it shall not be lawful for the owner or landlord of such lands to distrain for any rent on any corn, hay, straw, or other produce thereof, which at the time of such sale and the execution of such agreement entered into under the provisions of this act, shall have been severed from the soil and sold, subject to such agree-

Landlords not to distrain for rent on purchasers of corn severed from the soil, or other things sold under the 56 Geo. 3.

2. *What may be distrained.*

ment, by such sheriff or other officer; nor on any turnips, whether drawn or growing, if sold according to the provisions of this act; nor on any horses, sheep, or other cattle, nor on any beasts whatsoever, nor on any waggons, carts, or other implements of husbandry, which any person or persons shall employ, keep, or use on such lands for the purpose of thrashing out, carrying, or consuming any such corn, hay, straw, turnips, or other produce under the provisions of the act, and the agreement or agreements directed to be entered into between the sheriff or other officer, and the purchaser or purchasers of such crops and produce as hereinbefore are mentioned." (*See Peacock* v. *Purvis*, 2 *B. & B.* 362; 5 *Moore*, 79, S. C.; *Wright* v. *Dewes*, 1 *Ad. & Ell.* 641; *ante*, 278).

It has been decided in analogy with this act, that where a farm tenant is under covenant not to carry off the premises the hay and straw made on the farm, the landlord who has seized the hay and straw under a distress may sell it, subject to a condition that the purchaser shall consume it on the premises. (*Abbey* v. *Petch*, 8 *M. & W.* 419).

The queen not affected by this act.

The crown, or its process, not being in any way alluded to in this statute, is not affected by the provisions it contains for preserving covenants between the tenants and landlords of lands, &c. let to farm; the Court of Exchequer therefore held, that the sheriff, on a writ of *venditioni exponas* issued after an extent, could not sell the crops, &c. taken under it, subject to any condition that the same should be used and expended according to the covenants of the lease. (*R.* v. *Osbourne*, 6 *Price*, 94).

Stranger's or lodger's goods.

Generally, whatever goods and chattels the landlord finds upon the premises, whether they in fact belong to the tenant or a lodger, or a stranger, are distrainable by him for rent; for otherwise a door would be opened to infinite frauds upon the landlord; and the lodger or stranger hath his remedy over by action on the case against the tenant, if by the tenant's fault the goods are distrained, so that he cannot render them when called upon. (*See* 3 *Bla. Com.* 8; *ante*, 276).

Sometimes equity will relieve

But on particular circumstances perhaps a court of equity may relieve. As in *Fowkes* v. *Joyce*, 3 *Lev.* 260; 2 *Ventr.* 50, S. C., a person driving sheep to London to sell, by agreement with the master of an inn put them into the ground at so much a score for the night. The landlord seeing them, asked whose they were, but consented to their staying there, and afterwards distrained them for rent due to him from the master of the inn; and it was adjudged for the landlord. But in the same case, upon a bill for relief in equity, the lords commissioners seemed to think that the grounds lying to the inn, and used therewith, ought to have the same privileges the inn hath, and that a passenger's cattle ought not to be distrainable there. (2 *Vern.* 129). And on the ground of a fraudulent consent by the landlord it was decreed that he should answer for the value of the sheep, and pay costs both in law and equity. (*Prac. Ch.* 7). And a court of law in the present day would, it seems, be of opinion, that cattle belonging to a drover, being put into a ground with the consent of the occupier to graze only one night in their way to a fair or market, would not be liable to the distress of the landlord for rent. (2 *Saund*, 290, n. (7); *ante*, 277).

Cattle agisting.

Cattle escaped on the premises.

Where a stranger's beasts escape into the land, they may be distrained for rent, though they have not been levant and couchant, (that is, not having so long remained upon the ground as to have lain down and risen up again to feed), provided they are trespassers; but if the tenant of the land is in default in not repairing his fences, whereby the beast came into the land, the landlord cannot distrain such beasts, though they have been levant and couchant, unless he have caused notice to be given to the owner, and the owner suffers them to remain there afterwards. (*Lutw.* 364; *see Jones* v. *Powell*, 5 *B. & Cres.* 647; 8 *D. & R.* 416). But such notice, it is said, is not necessary where the distress is by the lord of the fee for an ancient rent, or by the grantee of a rent-charge. (*Woodf.* 301). Where the cattle escape accidentally, there they are not distrainable until they have been levant and couchant; but

if they escape by default of their owner, they are distrainable the first minute. (*Per Treby*, C. J., *Kemp* v. *Crewes*, 1 *Ld. Raym.* 169; *Lutw.* 1577, S. C.) "And if the cattle of one man escape into the land of another, it is no excuse that the fences were out of repair if they were trespassers in the place from whence they came. If it be a close, the owner of the cattle must show an interest or right to put them there. If it be a way, he must show that he was lawfully using the way; for the property is in the owner of the soil, subject to an easement for the benefit of the public." (*Per Heath*. J., *Dovaston* v. *Payne*, 2 *H Bla.* 531).

2. *What may be distrained.*

Things for which a replevin will not lie, so as to be known again, as money out of a bag, cannot be distrained. (2 *Bac. Abr.* 109; *Moore*, 394). But money in a bag sealed may be distrained, for the bag sealed may be known again.

Things for which a replevin will not lie.

Money.

Title deeds, receipts, bills, notes, &c., are not distrainable.

Title deeds, &c

Goods in the custody of the law are not distrainable; therefore goods distrained for damage feasant cannot be taken for rent, nor goods in a bailiff's hands on an execution, nor goods seized by process at the suit of the king, because they are in the custody of the law. (*Co. Litt.* 47; *Park*, 120). But the goods so in custody must be removed from the premises within a reasonable time, or they will not be protected. (*Blades* v. *Arundale*, 1 *Price*, 277; 1 *M. & Sel.* 711; *Peacock* v. *Purvis*, 2 *B. & B.* 362; 5 *Moore*, 79, S. C.; *ante*, 278). Goods taken under a void outlawry are liable to a distress for rent. (*President and Scholars of St. John's College, Oxford*, v. *Murcott*, 7 *T. R.* 259). We have already noticed the provisions of the 56 Geo. III. c. 50, *ante*, 279. Goods seized by a messenger under a fiat in bankruptcy are not while in his custody privileged from distress for rent due from the bankrupt to his landlord. (*Briggs* v. *Sowry*, 8 *M. & W.* 729). As to distraining growing crops seized in execution, *see ante*, 278; and see further as to distresses on goods under an execution, or in cases of bankruptcy, *post*, 308.

Goods in custody of the law.

By the 7 Anne, c. 12, s. 3, it is enacted, that process of distress against the goods of any ambassador or other public minister, &c. of a foreign state, or of their domestic servants, shall be void. But the goods, to entitle them to protection, must be for the necessary convenience of the ambassador or other public minister; and in the late war, where a British-born subject, employed as first chorister at the Portuguese ambassador's chapel with a salary, rented and occupied a house, and let part of it in lodgings, and a distress was levied on his goods for a poor's rate; it was held, that they were not protected by the statute, even assuming him to be a domestic servant of the ambassador. (*Novello* v. *Toogood*, 1 *B. & Cress.* 554).

Goods of ambassadors.

Trespass or trover will lie for distraining privileged goods. (*Ward* v. *Ventom*, *Peake's Add. Cas.* 126; *Brown* v. *Shevil*, 2 *Ad. & Ell.* 138; *Gorten* v. *Falkner*, 4 *T. R.* 565).

Action for distraining privileged goods.

A broker who enters under an ordinary warrant of distress and distrains on privileged goods, is not entitled to an indemnity from the person who employs him. But an undertaking to indemnify may in some cases be implied from the acts and directions of the landlord. (*Toplis* v. *Grane*, 7 *Scott*, 620; 5 *Bing. N. C.* 636; and see *Hart* v. *Leach*, 1 *M. & W.* 560; *Lyons* v. *Martin*, 8 *Ad. & Ell.* 513).

Bailiff's right to indemnity.

With respect to the remedy over by an under-tenant or lodger or other party distrained on for rent by the superior landlord against the person owing the rent, see *Schlencker* v. *Moxsy*, 3 *B. & Cress.* 789; 5 *D. & R.* 747, S. C. It may be laid down as a general rule, he has such remedy by action against his immediate landlord for not indemnifying. In *Schlencker* v. *Moxsy*, it was held, that were the tenant of premises had underlet a part by *deed*, and the original landlord distrained for rent upon the undertenant, the latter could not support *assumpsit* against his immediate lessor for an *implied promise* to indemnify him against the rent payable to the superior landlord.

Remedy by undertenant where he is distrained.

4. *Where the distress shall be made.*

III. At what Time the Distress shall be taken, and Statute of Limitation as to.

Time of distress

For a rent or service the lord cannot distrain in the night, but in the day-time; and so it is of a rent-charge; but for *damage feasant*, one may distrain in the night; otherwise it may be the beasts may be gone before he can take them. (1 *Inst.* 142, (*a*).)

Before sunrising, or after sunset, no man can distrain but for *damage feasant*. (*Mirrour*, c. 2, s. 26; see also *Milborn's Case*, 7 *Rep.* 7 (*a*); *Aldenburgh* v. *Peaple*, 6 *C. & P.* 212).

In general the distress cannot be on the day the rent falls due; when otherwise, see *ante*, p. 271. It cannot be made in general after the expiration of the tenancy, when otherwise, *ante*, 273.

Statute of Limitation as to.

By the stat. 3 & 4 Will. 4, c. 27, s. 42, the rent must be distrained for within six years after it becomes due, or after an acknowledgment in writing, signed by the party who owes it or his agent. (*See the cases of Grant* v. *Ellis*, 9 *M. & W.* 113; *Strachan* v. *Thomas*, 12 *Ad. & Ell.* 536; *Paget* v. *Foley*, 3 *Scott*, 120; 2 *Bingh. N. C.* 679, S. C., *as to the limitation of actions for rent*).

IV. Where the Distress shall be made.

Church lands.

The king's officers, as sheriffs and others, shall not take distresses in the fees wherewith churches in times past have been endowed: but distresses may be taken in possessions of the church newly purchased. 9 Edw. II. c. 9.

On the premises.

A man may distrain in places or lands within the fee, or premises demised liable to distress, and not elsewhere. (52 Hen. III. c. 51; 2 *Inst.* 131; *Mir.* c. 2, s. 26). If made elsewhere the tenant may, before impounding, rescue that distress, or, whether before or after impounding, may bring his action of trespass or trover.

On common and ways.

And by the 11 Geo. II. c. 19, s. 8, the landlord may distrain any *cattle or stock* of the tenant, depasturing on any common appendant or appurtenant, or any ways belonging to the premises demised. The right given by this act is confined to cattle and live stock, so that a distress could not be made on a cart standing on a common, unless fraudulently removed. (*Furneaux* v. *Fotherby*, 4 *Campb.* 136).

On highways.

No person (except the king's officers) shall take distresses in the king's highway. (52 Hen. III. c. 51). And the reason is, because the king's subjects ought to have free passage as well to fairs and markets as about their other affairs. But this rule is confined to the first taking of the distress; for if the lord coming to distrain see the beasts within his fee, and before he can distrain them they are chased into the highway, he may distrain them therein. (2 *Inst.* 132). And this statute, though passed for a remedy to the party distrained on, does not avoid the distress. (*Ib.*; *F. N. B.* 90; *Buzzard* v. *Capel*, 4 *Bingh.* 140; 12 *Moore*, 339; 2 *C. & P.* 541).

Barge on river.

A barge attached by a rope to a wharf in the river Thames, in the space between high and low water mark, cannot be distrained on for rent in arrear, in respect of the wharf and premises attached to it. (*Buzzard* v. *Capel*, 8 *B. & Cres.* 141; 3 *Y. & Jerv.* 344, S. C.; overruling 4 *Bingh.* 137, S. C.).

On canal for canal rates.

A distress for canal rates should, it seems, in general be made on the canal; though this of course must depend on the act of parliament authorizing the canal. (See *Fraser* v. *Swansea Canal Company*, 1 *Ad. & Ell.* 360). It was there held, that a power to *seize* for tolls on goods passing along a canal in barges, and to sell, unless redeemed by payment of arrear of toll then due from owner, within seven days after appraisement, and as in cases of distress, does not authorize a seizure of coals on a wharf adjoining canal for tolls due in respect of the carriage thereof,

and the seizure can only be made whilst the coals are on board a barge, and in the canal.

5. Goods fraudulently removed.

V. Goods fraudulently conveyed off the Premises.

Goods fraudulently removed.

If the lessor did not find sufficient or any goods on the premises demised, he could formerly resort to no where else to distrain, and therefore tenants who were knavish made a practice to convey away their goods and stock fraudulently from the premises demised, in order to cheat their landlords.

11 Geo. 2, c. 19.

But now, by stat. 11 Geo. II. c. 19, s. 1, "in case any tenant or tenants, lessee or lessees, for life or lives, term of years, at will, sufferance or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due, or made payable, shall fraudulently or clandestinely convey away, or carry off or from such premises, his, her or their goods or chattels, to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved, due, or made payable; it shall and may be lawful to and for every landlord or lessor, landlords or lessors, within that part of Great Britain called England, dominion of Wales, or the town of Berwick-upon-Tweed, or any person or persons by him, her or them for that purpose lawfully empowered, within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of rent; and the same to sell, or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, lessors or landlords, in and upon such premises for such arrears of rent; any law, custom, or usage to the contrary in anywise notwithstanding."

May be distrained on within thirty days after removal,

Except when bonâ fide sold.

Sect. 2. "No landlord or lessor, or other person entitled to such arrears of rent, shall take or seize any such goods or chattels as a distress for the same, which shall be sold *bonâ fide*, and for a valuable consideration, before such seizure made, to any person or persons not privy to such fraud as aforesaid; anything herein contained to the contrary notwithstanding."

Outer doors may be broken open.

Calling in the aid of constables and justices.

Sect. 7. "Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her or their servant or servants, agent or agents, or other person or persons aiding or assisting therein, shall be put, placed or kept in any house, barn, stable, outhouse, yard, close or place locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent; it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her or their steward, bailiff, receiver, or other person or persons empowered to take and seize, as a distress for rent, such goods and chattels, (first calling to his, her or their assistance the constable, headborough, borsholder, or other peace officer of the hundred, borough, parish, district or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein; and in case of a dwelling-house, oath being also first made (*a*) before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein), in the daytime, to break open (*b*) and enter into such house, barn, stable, outhouse, yard, close and place, and to take and seize such goods and chattels for the said arrears of rent, as he, she or they might have done by virtue of this or any former act, if such goods and chattels had been put in any open field or place."

Persons assisting to forfeit double the value.

Sect. 3. "And to deter tenants from such fraudulent conveying away their goods and chattels, and others from wilfully aiding or assisting

(*a*) See form, (No. 14), *post*. (*b*) See form, (No. 15), *post*.

5. *Goods fraudulently removed.*

Action for penalty.

therein, or concealing the same, it is enacted, that from and after the said 24th day of June, if any such tenant or lessee shall fraudulently remove and convey away his or her goods or chattels as aforesaid, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same; all and every person and persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, *double the value of the goods by him*, her or them respectively carried off or concealed as aforesaid; to be recovered by action of debt in any of his Majesty's courts of record at Westminster, or in the courts of session in the counties palatine of Chester, Lancaster, or Durham respectively, or in the courts of grand sessions in Wales; (*a*) wherein no essoign, protection, or wager of law shall be allowed, nor more than one imparlance."

Where goods not exceeding 50*l.* in value are concealed, &c complaint may be made to two justices.

Sect. 4. "Where the goods and chattels so fraudulently carried off or concealed shall not exceed the value of 50*l.* it shall and may be lawful for the landlord or landlords, from whose estate such goods or chattels were removed, his, her or their bailiff, servant or agent, in his, her or their behalf to exhibit a complaint in writing (*b*) against such offender or offenders, before two or more justices of the peace of the same county, riding or division of such county, residing near the place whence such goods and chattels were removed, or near the places where the same were found, not being interested in the lands or tenements whence such goods were removed; who may summon (*c*) the parties concerned, examine the fact, and all proper witnesses, upon oath; or if any such witness be one of the people called Quakers, upon affirmation required by law; and in a summary way determine, whether such person or persons be guilty of the offence with which he or they are charged; and to inquire in like manner of the value of the goods and chattels by him, her or them respectively so fraudulently carried off or concealed as aforesaid; and, upon full proof of the offence, by order (*d*) under their hands and seals, the said justices of peace may and shall adjudge the offender or offenders to pay *double the value of the goods and chattels* to such landlord or landlords, his, her or their bailiff, servant or agent, at such time as the said justices shall appoint; and in case the offender or offenders having notice of such order, shall refuse or neglect so to do, may and shall by warrant (*e*) under their hands and seals, levy the same by distress and sale of the goods and chattels of the offender or offenders; and for want of such distress (*f*) may commit the offender or offenders to the house of correction (*g*), there to be kept to hard labour without bail or mainprize for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied."

Offender to pay double value.

Distress (*f*).

Commitment (*g*).

Appeal (*h*).

Sect. 5. "It shall and may be lawful for any person who thinks himself aggrieved by such order of the said two justices to appeal to the justices of peace at their next general or quarter sessions to be held for the same county, riding or division of such county, who may and shall hear and determine such appeal, and give such costs to either party as they shall think reasonable, whose determination therein shall be final."

Recognizance

Sect. 6. "Where the party appealing shall enter into a recognizance (*i*) with one or two sufficient surety or sureties in double the sum so ordered to be paid, with condition to appear at such general or quar-

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(*a*) The Welsh jurisdiction is abolished by 1 Will. IV. c. 70. See "*Wales*," *Vol. VI.*

(*b*) See form, (No. 7), *post*.

(*c*) See form, (No. 7), *post*.

(*d*) See forms, (No. 10), *post*; and see title "*Order*," *Vol. V.*

(*e*) See form, (No 10), *post*.

(*f*) See form, (No. 11), *post*; see the 5 Geo. IV. c. 18, *post*.

(*g*) See form, (No. 12), *post*; see in general, "*Commitment in Execution*," *Vol. I.*

(*h*) See in general, "*Appeal*," *Vol. I.*

(*i*) See form, (No. 13), *post*.

ter sessions, the order of the said two justices shall not be executed against him in the mean time."

5. Goods fraudulently removed.

Proceedings stayed.

2 & 3 Vict c. 47.

Removing furniture to evade rent within the metropolitan police district.

By the 2 & 3 Vict. c. 47 (the Metropolitan Police Act), it is enacted, "that it shall be lawful for any constable (within the metropolitan police district) to stop and detain, until due inquiry can be made, all carts and carriages which he shall find employed in removing the furniture of any house or lodgings between the hours of eight in the evening and six in the following morning, or whenever the constable shall have good grounds for believing that such removal is made for the purpose of evading the payment of rent.

Act remedial, not penal.

Observations and Decisions on the above enactments of the 11 *Geo.* II. *c.* 19.]—The *first* and *second* sections of this act are remedial, and not penal, and should be construed liberally. (See *Stanley* v. *Wharton*, 9 *Price*, 301; *Brooke* v. *Noakes*, 8 *B. & Cres.* 537).

Justices of the peace have jurisdiction under s. 4 to inquire into and adjudicate on an information for the alleged fraudulent removal of goods by a tenant, although it appears that the property in the premises is disputed, and that the tenant has paid the rent to one of the claimants. (*Coster* v. *Wilson*, 3 *M. & W.* 411).

Applies to goods of tenant only.

The act applies to the goods of the *tenant* only, which are fraudulently removed, and not those of a stranger (*Thornton* v. *Adams*, 5 *M. & Sel.* 38); and it does not apply to an undertenant removing to avoid the distress of a landlord on his immediate tenant. (*Ib.; Bennet's case*, 2 *Stra.* 787; *Postman* v. *Hurrell*, 6 *C. & P.* 225).

A creditor may, with the assent of the debtor, remove goods from the premises for the payment of a *bonâ fide* debt, without incurring the penalty of the third section of the statute for assisting in removing goods. (*Bach* v. *Meats*, 5 *M. & Sel.* 200).

Rent must be due before removal.

To bring the case within the statute, the removal must have taken place *after the rent became due.* (*Northfield* v. *Nightingale*, 1 *C. & M.* 230, n.; *Rand* v. *Vaughan*, 1 *Bingh. N. C.* 767; *Watson* v. *Main*, 3 *Esp.* 15; 2 *Saund.* 284, *n.* 2; removing the doubt expressed by Lord *Ellenborough* in *Furneaux* v. *Fotherby*, 4 *Campb.* 136). And goods removed before the rent became due, cannot be followed and distrained, though they were removed fraudulently. (*Watts* v. *Thomas*, 1 *Jur.* 919).

Removal after end of tenancy.

A landlord has no right to follow the goods of a tenant, who has removed them after the tenancy had expired, by the landlord having conveyed away the reversion. (*Ashmore* v. *Hardy*, 7 *Car. & P.* 501).

If sufficient distress left on premises, case not within act.

If there be a sufficient distress left on the premises at the time of the removal, the case is not within the act, and the goods cannot be followed, and it lies on the landlord to prove that there was not such sufficient distress. (*Parrey* v. *Duncan*, 1 *M. & M.* 533).

What a fraudulent removal.

The first and second sections apply to all cases where a landlord is, by the conduct of his tenant in removing goods from premises for which the rent is due, turned over to the barren right of bringing an action for his rent. Where, therefore, a tenant openly and in the face of day, and with notice to his landlord, removed his goods without leaving sufficient on the premises to satisfy the rent then due, and the landlord followed and distrained the goods, it was held, that although the removal might not be clandestine, yet as it was fraudulent, (which was a question for a jury), the landlord was justified under the act in seizing the goods. (*Opperman* v. *Smith*, 4 *D. & R.* 33).

The removal need not be clandestine as well as fraudulent (*Ib.*); and it is immaterial whether the removal took place by night or with any concealment. (*Ib.; Lyster* v. *Powron*, 1 *C. & P.* 121).

The mere removal of goods by the tenant from the premises when rent is in arrear is not of itself fraudulent as against the landlord; and to justify him in pursuing them he must show that they were removed with a view to elude a distress, as by showing that the tenant left none on the premises or the like. (*Parry* v. *Duncan*, 7 *Bingh.* 243; 5 *M. & P.* 19, S. C.).

5. *Goods fraudulently removed.*

It is not necessary to show, in proof of concealment of cattle, that they were withdrawn from sight; if they have been removed to a neighbour's field so as to cause the landlord difficulty in finding them, it is sufficient. (*Stanley* v. *Wharton*, 9 *Price*, 301).

Question always for a jury.

It seems that it is always a question for the jury whether the removal was fraudulent, although it be admitted by the tenant at the trial that the removal was to avoid a distress. (*John* v. *Jenkins*, 1 *C. & M.* 227).

Proceedings against third persons.

It has been held under the third section, as we have seen *supra*, that a creditor, with the assent of his debtor, may take possession of the goods of the latter, and remove them from the premises for the purpose of satisfying a *bonâ fide* debt, without incurring the penalty inflicted by that section, although such creditor takes possession knowing the debtor to be in distressed circumstances and under an apprehension that the landlord will distrain. (*Bach* v. *Meats*, 5 *M. & Sel.* 200).

Proceedings against persons assisting in removal.

To make a *third party* liable, it must be proved he assisted in the removal, and was also privy to the fraudulent intent. (*Brooke* v. *Noakes*, 8 *B. & Cres.* 537). And in that case the court seemed to be of opinion that the statute is so far penal, that it is incumbent, in an action by the landlord against a third party, for assisting the tenant in such fraudulent removal, to bring the case by strict proof within the words of the first section.

In such action against a third person, the acts and orders of a tenant are admissible evidence of his own fraud, and of knowledge on the part of the defendant, if by other evidence he is proved to have contributed to the facility of it; and circumstances of suspicion may be laid before the jury to prove such fraudulent co-operation as the legislature contemplated. (*Stanley* v. *Wharton*, 10 *Price*, 138; 9 *Price*, 301, S. C.)

Action against tenant on the third section.

In an action against the tenant himself on the third section, it is not necessary to shew an actual participation in the act if the removal was with his privity. (1 *C. & P.* 121; 3 *D. & R.* 501, S. C.)

Proceedings before justices.

Justices either of the county *from* which the tenants fraudulently remove goods, or of that *in which they are concealed*, may convict the offenders within their respective counties. (*R.* v. *Morgan*, *Cald.* 156).

The value of the goods being under 50*l.* does not render it *compulsory* on the party to have recourse to the summary remedy before two justices under the *fourth* section. (*Stanley* v. *Wharton*, 9 *Price*, 301; *Horsefall* v. *Davy*, *Holt*, *C. N. P.* 147; 1 *Stark.* 169, S. C.; *Bromley* v. *Holden*, 1 *M. & M.* 175).

The fact of the landlord's having in the first instance made his complaint under the act before a magistrate, will not prevent him from afterwards bringing an action. (*Horsefall* v. *Davy*, 1 *Stark.* 169; *Holt*, *C. N. P.* 147, S. C.)

Form of order.

As to orders in general, see "*Orders*," *Vol. V.* An order of magistrate under the act need not enumerate or specify the particular goods alleged to have been removed. (*R.* v. *Rabbits*, 6 *D. & R.* 341).

The order must show on the face of it that the party removing the goods was tenant; and that is not sufficiently shown by stating that on complaint duly made the party was charged with having fraudulently removed his goods from certain premises to prevent A. B. from distraining them for arrears of rent due to him for the said premises, and that it appearing that he did so remove, &c., he is convicted thereof. (*R.* v. *Davis*, 5 *B. & Adol.* 551). *Semble* also, that the order should state that the complainant was the party's landlord, or the bailiff, servant, or agent of such landlord. (*Ib.*)

Where a party is convicted of aiding and assisting the tenant in fraudulently conveying away the goods, the order must expressly allege the offence to have been committed "wilfully and knowingly." (*Reg.* v. *Radnorshire* (*JJ.*), 9 *Dowl.* 90; *Ex parte Morgan*, 4 *Jur.* 916, S. C.)

In the last case, *Williams*, J., doubted whether, since the case of *Rex* v. *Hulcott*, (6 *T. R.* 583), any intelligible distinction can be said to exist between an order and a conviction; it is therefore advisable that the order under this act should be drawn up with all the strictness

of a conviction. It seems, however, that it is not necessary to *set out the evidence* in it. (*R.* v. *Bissex, Sayer*, 304; 29 & 30 Geo. II.; MS. (*Burn*), S. C. (*a*); *and see R.* v. *Justices of Cheshire*, 5 *B.* & *Adol.* 439).

5. Goods fraudulently removed.

(*a*) *R.* v. *Bissex*, T. 29 & 30 Geo. II., MS. (*Burn*); *S. C. Sayer*, 304. Order made by two justices, reciting that a complaint had been made to them in writing by A. Clavey against J. Bissex, that he the said Clavey demised his estate in the parish of Shelley, in the county of Somerset, to William Thatcher, at the yearly rent of 44*l.*, and that there was due in arrear from Thatcher to him for rent of the said estate, on the 5th day of April last, 24*l.* 15*s.* 8½*d.*; and that he the said Clavey would have distrained the goods and chattels of the said W. Thatcher upon the said estate, in order to obtain satisfaction of the said rent; but to prevent him from so doing, the said Bissex, on or about the 27th, 28th, and 29th days of August last, did knowingly and wilfully aid and assist the said Thatcher in fraudulently conveying and carrying off from the said estate his the said Thatcher's goods and chattels, and also in concealing the same, being under the value of 50*l.*; that is to say, two cows, one heifer, and ten hundred weight of cheese, of the value of 20*l.*; whereby the said Clavey was prevented from distraining the same in order to obtain satisfaction for the said rent, and contrary to the statute 11 Geo. II., and therefore praying us to grant him our warrant of summons, requiring you the said J. Bissex to appear before us, and that we would examine the fact, and thereupon make such order therein for his relief as the said statute directs and requires, and as should be agreeable to justice; whereupon we the said justices, residing near the said estate from whence the said goods and cattle were removed, and neither of us any way interested in the said estate, did issue our warrant of summons, requiring you the said J. Bissex to attend us thereon to answer the said complaint; and you having attended accordingly, and we in your presence having examined the witnesses produced by the said A. Clavey upon oath, and heard what was alleged by you in your defence, do adjudge that the said complaint is true; and that the said goods and cattle of the said W. Thatcher, which you so aided and assisted in conveying and carrying off from the said estaie, and also in concealing the same, were of the value of 20*l.*, and that you have thereby forfeited double the value of the said goods and cattle, being the sum of 40*l.*, to the said complainant, A. Clavey, by virtue of the said statute: we, therefore, in pursuance of the said statute, do adjudge, order, and require you the said J. Bissex, within the space of three days from the date hereof, to pay to the said A. Clavey the sum of 40*l.*, which if you shall neglect to do, such further proceedings will be then had against you to enforce the payment thereof as the said statute directs and requires. Given under our hands and seals this 5th day of January, 1756. This order was affirmed by the sessions upon appeal. Both the orders were removed by *certiorari* into the King's Bench. It was moved to quash the same. Objections taken: 1. The complaint is said to be taken in writing, but not upon oath. 2. It is only said, that he demised to W. Thatcher; but not said for what estate or term. 3. It is stated, so much was due for rent, but not said for what term; it might be due twenty years ago: it is not stated to be due when Thatcher removed his goods. 4. The words of the order are, goods and *cattle*; of the statute, goods and *chattels*. 5. No certain time is alleged when the defendant aided and assisted; only said, on or about the 26th, 27th, or 28th of August. 6. Not stated that Thatcher did carry off his goods; only that Bissex did aid and assist him in carrying them off. 7. They adjudge the complaint true, but do not state the evidence; and this is a conviction, not an order; and for any thing that appears, it might be upon Clavey's evidence alone. 8. It is not stated that the goods were under the value of 50*l.*, which is the ground of the justices' jurisdiction. 9. The words of the statute are, if any person shall be a tenant of any lands, tenements, or hereditaments: the word used in the order is *estate*; which may be a thing incorporeal, or may mean the interest in the land, and so not within the statute. 10. It should appear whether the landlord has a right to distrain: by stat. 8 Anne, c. 14, the landlord may distrain at any time within six months after the expiration of the term; it does not appear that these six months were not expired; and if they were, this is no offence. After considera-

5. *Goods fraudulently removed.*

The charge, though set out in the order in the *alternative*, will be good, there being a difference between an indictment or conviction and an order in this respect. (*R.* v. *Middlehurst*, 1 *Burr.* 399 (*a*)).

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tion, Mr. J. *Denison* delivered the resolution of the court: "I think the most material objection is, whether this is an order or a conviction. If a conviction, the evidence ought to have been set out. And there has been no doubt, (notwithstanding the case of *R.* v. *Purleine*, 1 *Salk.* 369), that in a conviction the evidence must be set out, that the court may judge upon it. So it was held by Lord *Hardwicke*, in the case of *R.* v. *Lloyd*, (*Stra.* 996); and in that case it was objected that as it subjected the party to a penalty, though in the statute it was called an order, yet it should be construed as a conviction; but the court said, every act of the justices, which subjects the party to a penalty, shall not be construed as a conviction; *R.* v. *Venables*, *Stra.* 630; 2 *Ld. Raym.* 1406, S. C., upon the statute for licensing alehouses, considered as an order; *R* v. *Blackwell*, M. 4 G. II., which the court said was a strong case, and must be considered as an order. I understood from Lord *Hardwicke*, in the case of *R.* v. *Lloyd*, that his ground of the difference was founded upon the expression of the statute and not upon the penalty; as where the words of the statute are, 'of which he shall be convicted,' it is to be construed as a conviction. Here it is extremely strong; the statute calls it an order: and in the nature of it, it is the examination upon a complaint. If the party were never summoned, this court, upon affidavit, will grant an information against the justices; but the summons need not be set out; and the court will intend that the justices have done right, in case the contrary does not appear upon the face of the order. As to the 1st objection: this is not an information, but a complaint; when the party is summoned, the witnesses are to be examined upon oath, but the complaint need not be upon oath. In answer to the 2nd objection: as the order has followed the words of the statute, we will not intend it a case wherein the justices had not a jurisdiction. The court will not, in case of an order, intend that the justices have done wrong. As to the 3rd objection: it is sufficiently alleged in an order; his assisting the tenant to carry away the goods, as it is here alleged, is sufficient to show the rent continued then to be in arrear; and the rather, as the defendant might have availed himself of the rent paid, by proving it before the justices. I much doubt whether in a declaration it would not be sufficient to say, the rent was in arrear at such a day; and I think it would lie upon the defendant to prove that the rent does not remain in arrear. As to its not being said for what time the rent was due. this is mere matter of form. As to the 5th objection: *about*, in common parlance, means in this case three days, or near it. They might be three days in carrying the goods away. The days are not material even in legal proceedings. (*R.* v. *Chandler*, 1 *Ld. Raym.* 581). And in the case of *R.* v. *Simpson*, H. 3 Geo. II. (*Stra.* 46), the day and hour in a conviction are not material. By this statute no time is limited when the complaint shall be made: it may be made at any time. Suppose that the defendant had paid the penalty on a different complaint made, he might easily have shewn it. As to the 6th, the answer is obvious: if Thatcher had not carried his goods away, the defendant could not have aided in carrying them. The statute makes two offences; one, carrying the goods away, the other, aiding in carrying them away. It is only necessary here to state the offence which the defendant had been guilty of, which this order does in the words of the statute. In the case of *R.* v. *Monk*, M. 13 G. II., there was a conviction for aiding and assisting in killing a buck. It was objected, that it was not charged the buck was killed. But the court held, that as the conviction was in the words of the statute, it was sufficient. And the court held they were all principals, as well those that killed the buck as those that assisted. And this was the case of a conviction. All the other objections may have this general answer: that in case of orders, where the justices have jurisdiction, we will intend they have acted right; and if they have done wrong, they may be punished by an information. Let the orders be confirmed." (See "*Order of Justices*," *Vol. V.*).

(*a*) So in *R.* v. *Middlehurst*, (1 *Burr.* 399). Two justices made an order against one T. M. for wilfully and knowingly aiding and assisting J. C., the tenant of Sir T. F., in fraudulently removing and conveying away five cows

6. *Manner of taking, &c.*

Order not amendable.

The adjudication of the justices under the statute is an order and not a conviction, and cannot, therefore, like a conviction, be returned to the sessions in an amended form. (*R.* v. *Justices of Cheshire*, 5 *B. & Ad.* 439).

Warrant of commitment.

A warrant of commitment, under it not stating that there had been a complaint in writing to the justices, or that the examination of witnesses was upon oath, but referring to the order of the justices (for payment of double the value of the goods removed) in which those matters were stated, was held sufficient; and that the justices were not liable in trespass. (*Coster* v. *Wilson*, 3 *M. & W.* 411).

Constable must aid in breaking open doors.

It is absolutely requisite, in order to justify breaking open outer gates or doors, or where other force is resorted to, under the 7th section of the act, to call in the aid of a constable as therein prescribed. (*Rich* v. *Woolley*, 7 *Bing.* 651; 5 *M. & P.* 663, S. C.) But it is not necessary that a party seizing goods fraudulently removed should first call to his assistance an ordinary peace officer; it is sufficient if he be assisted by a person appointed a special constable for the occasion. (*Cartwright* v. *Smith*, 1 *M. & Rob.* 284).

Defence of fraudulent removal to be specially pleaded.

A defence for proceeding under the act must be pleaded specially, the statute 11 Geo. II. c. 19, s. 21, (*post*, 306), not applying to such a case. (*Postman* v. *Harrell*, 6 *C. & P.* 225; and see further, as to the pleadings, *Bowler* v. *Nicholson*, 12 *Ad. & Ell.* 341; *Fletcher* v. *Marillier*, 9 *Ad. & Ell.* 457; *Norman* v. *Wescombe*, 2 *M. & W.* 349).

VI. Manner of taking Distress, and what is a taking.

This has already been partially considered as far as respects the time and place of taking and the goods that may be taken. (*Ante*, 281, 282).

By bailiff, deputed by warrant.

The distress is made either by the landlord in person, or, as is more usual, by some person deputed by him by warrant. (See *ante*, 275).

The stat. Westm. 2, c. 37, which requires distresses to be made by brokers, sworn and known, does not extend to distresses for rent. (*Child* v. *Chamberlain*, 6 *C. & P.* 213; *Begbie* v. *Hayne*, 2 *Scott*, 193).

Breaking gates and outer doors.

Gates or inclosures may not be broken open, nor thrown down, to make a distress. (1 *Inst.* 161). Nor may the lessor enter into the tenant's house, unless the doors are open. (2 *Bac. Abr.* tit. *Distress*, 347; *Gould* v. *Bradstock*, 4 *Taunt.* 562). Upon a question about taking a distress, it was holden by the Lord Chief Justice *Hardwicke*, (Exeter Summ. Ass. 1736), that a padlock put on a barn door could not be opened by force, to take the corn by way of distress. (9 *Vin. Abr.* 128, pl. 6). But if the outer door of a house be open, one may break an inner door if necessary to take a distress. (*Browning* v. *Dann*, *Cases temp. Hardw.* 168; *Bull. N. P.* 7th edit. 81, c).

In case of rescue.

In case of a rescue it would seem that an outer door may be broken open to re-enter and regain possession, if done immediately afterwards. But where a broker's man having taken possession of property under a distress for rent, after remaining two days, left the house

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and other goods, or in concealing the same. Which order, on appeal to the sessions, was confirmed. It was removed to quash these orders upon two objections. 1. That it is not described sufficiently what the offence is. 2. That the charge was in the disjunctive, that he assisted the tenant in removing *or* concealing the goods. By Lord *Mansfield*, C. J. "Upon indictments it hath been determined, that an alternative charge is not good (as, forged *or* caused to be forged); though one only need be proved, if laid conjunctively (as, forged *and* caused to be forged); but I do not see the reason of it; the substance is exactly the same; the defendant must come prepared against both; and it makes no difference to him in any respect. But this is an order; and being good in substance, needs not be literally so strict. And by the court, the rule to shew cause was discharged, and consequently both orders affirmed."

7. *Distraining twice.*

in a state of great excitement, bordering on insanity. The landlord thinking that his leaving had been procured by the drugging of his liquor by the parties in the house, but which was not proved, six days after broke into the house and took away the goods, without any previous demand of admission: but it was held, that he had no right to enter again after so long a delay, and that the owner of the goods might maintain trover for them. (*Russell* v. *Rider*, 6 *C. & P.* 416).

In case of fraudulent removal.

Where the goods are clandestinely conveyed, it will be seen from what hath been said, that in order to make distress, gates and doors may be broken open if a constable be present. (*Ante*, 283; *Rich* v. *Woolley*, *ante*, 289; and see further as to breaking open doors, "*Warrant*," *Vol. VI.*)

What amounts to a taking

With respect to what is a good taking, if a landlord come into a house and seize upon some goods as a distress, in the name of all the goods of the house, that will be a good seizure of all. (*Dod* v. *Monger*, 6 *Mod.* 215).

Where a landlord's agent went upon the tenant's premises, walked round them, and gave a written notice that he had distrained certain goods lying there for an arrear of rent, and that unless the rent was paid or the goods replevied within five days, they would be appraised and sold, and then went away not leaving any person in possession; it was held, that this was a sufficient taking to give the tenant a right of action for an excessive distress, (there being one), and that quitting the premises without leaving any one in possession was not an abandonment of the distress, the 11 Geo. II. c. 19, s. 10, giving the landlord power to impound or otherwise secure the goods on the premises distrained. (*Swann* v. *Earl Falmouth*, 8 *B. & Cres.* 456).

So where a landlord, to whom rent was in arrear, hearing his tenant and a stranger disputing about the property of an article on the premises early in the morning, entered and said, "The article shall not be removed till my rent is paid." The stranger nevertheless removed the article on the same day, after such removal the landlord sent his broker to distrain for the rent; it was held, that the distress was sufficiently commenced by the landlord to entitle him to the article in question. (*Wood* v. *Nunn*, 5 *Bing.* 10; 2 *M. & P.* 276).

A landlord's broker went to the tenant's house, and pressed for payment of rent alleged to be due, and 3*l.* 3*s.* for expenses of the levy, but touched nothing, and made no inventory. The tenant paid him the rent and expenses under protest, on which he withdrew. In an action against the landlord for an excessive distress, the defendant was not allowed to say that there had been no actual distress. (*Hutchins* v. *Scott*, 2 *M. & W.* 809).

But where A. entered plaintiff's house, and said that he came to make a distress, and began taking an inventory; but finding out he had made a mistake, left the house without removing any of the goods; his acts, it was considered, did not amount to making distress. (*Spice* v. *Webb*, 2 *Jur.* 943).

Aid of police

In making a distress for rent, circumstances may occur which may require the presence of a police officer. But to justify the landlord in calling him in, it must be shewn that his presence was rendered necessary either from threats of resistance, or the apprehension of violence, &c. (*Skidmore* v. *Booth*, 6 *C. & P.* 777).

VII. When a Party may distrain twice.

Distraining twice

When a man is entitled to distrain for an entire duty, he ought to distrain for the whole at once, and not for part at one time, and part at another; as in the case of *Wallis* v. *Savill* (*Lutw.* 1532), a second distress was held unjustifiable, because both distresses were taken for one and the same rent, and it was the lessor's folly that he had not taken a sufficient distress at first. But if he distrains for the whole,

and there is not sufficient on the premises, or he happens to mistake the value of the thing distrained, and so takes an insufficient distress, he may take a second distress to complete his remedy. For if a man seize for the whole sum that is due to him, and only mistake the value of the goods seized, (which may be of very uncertain, or even imaginary value, as pictures, jewels, race-horses, and the like), there is no reason why he should not afterwards complete his execution by making a further seizure, provided it be for the same sum due. *Hutchins* v. *Chambers*, 1 *Burr.* 589; and see *Hudd* v. *Ravenor*, 2 *B. & B.* 662; 5 *Moore*, 542, S. C.)

8. *Must be reasonable, and not for more than due.*

The restriction which existed on this subject at the common law was removed by stat. 17 Car. II. c. 7, which enables the lessor, or his executors or administrators, to make a second distress, in case there be not sufficient goods found on the premises at the time of the first distress, or that the party mistake the value of the things distrained, a provision which is calculated as much for the benefit of the tenant as that of his landlord; for as it was observed by Lord *Mansfield*, in the case of *Hutchins* v. *Chambers*, (1 *Burr.* 579), "if a person were not permitted to distrain a second time, in case he at first makes an insufficient distress, it might induce him to a necessity of taking effects of very great value; which, in things of an *uncertain* or *imaginary* value, he might do without being guilty of an excessive distress; and this would be far more prejudicial to the tenant, than to allow a second distress to be made." (*Bradby*, 130).

Thus by the statute, in all cases where the value of the cattle distrained shall not be found to be to the full value of the arrears distrained for, the party to whom such arrears were due, his executors or administrators, may distrain again for the residue of the said arrears. So in like manner, where the distress is made by virtue of the warrant of a justice of the peace, in nature of an execution. And the distinction seems to be this: where a person hath an entire duty, he shall not split the entire sum, and distrain for part of it at one time, and for part of it at another time, and so *toties quoties*, for several times; for that is great oppression. (*Hutchins* v. *Chambers*, 1 *Burr.* 579).

In replevin, a plea of a former distress for the same rent, without adding that the rent was satisfied, was held bad, (*Hudd* v. *Ravenor*, 2 *B. & B.* 662; 5 *Moore*, 542, S. C.)

If a distress be relinquished at the request of the tenant, the landlord may distrain a second time. (*Lear* v. *Edmonds*, 1 *B. & Ald.* 159).

So he may do also if the distress die in the pound, or be otherwise destroyed by the act of God. (*Vesper* v. *Eddowes*, 1 *Salk.* 248; 1 *Ld. Raym.* 719, S. C.)

The tenant's remedy for a second unjustifiable distress is by special action on the case, or trover, or trespass.

VIII. Distress shall be reasonable, and not for more Rent than is due.

By stat. 52 Hen. III. c. 4, distresses shall be reasonable and not too great; and he that taketh great and unreasonable distresses shall be grievously amerced. For example, if the lord distrain two or three oxen for 12*d.* or the like small sum, and the owner replevy the oxen, and the lord avow the taking of them for the 12*d.* of his own showing, he shall make fine; or the party may have his action upon this statute. (2 *Inst.* 107). If the lord distrain an ox, or horse, for a penny, if there were no other distress upon the land, holden the distress is not excessive; but if there were a sheep, or a swine, or the like, then the taking of the ox or horse is excessive, because he might have taken a beast of less value. (2 *Inst.* 107).

Distress to be reasonable.

Where a landlord is about to make a distress, he is not bound to calculate very nicely the value of the property seized; but he must take

8. *Must be reasonable, and not for more than due.*

care that some proportion is kept between that and the sum for which he is entitled to take it. Per *Bayley*, J. (*Willoughby* v. *Backhouse*, 2 *B. & C.* 823). Where seven guineas were in arrear, and goods were taken, valued by the plaintiff's witness at 30*l.*, but which in fact sold for only 10*l.*, it was contended that the plaintiff ought to be non-suited; but Lord *Ellenborough* left the case to the jury, and said, "There is a distinction between the cases where there is but one thing that can be distrained, and where there are many, and so the distress is divisible. If there is but one thing that can be taken, so that it must be taken or the party must go without his distress, for taking it no action lies, though it much exceeds the sum for which it was taken. But if there are several articles of some value, and there is much more taken than is sufficient to satisfy the rent and expenses, this action is maintainable, and express malice is not necessary to maintain the action, nor required to be proved; but it is not for every trifling excess that this action is maintainable: it must be disproportionate to some extent, and if disproportionate to an excess, the action is clearly maintainable." (*Field* v. *Mitchell*, 6 *Esp.* 71).

Action for unreasonable distress.

At common law the right of a landlord to distrain for rent service appears to be restricted to the taking of a *reasonable distress*, and Lord *Coke* intimates that the above statute 52 Hen. III. (Statute of Marlbridge) agreeth in that respect with the reason of the common law. (2 *Inst.* 107). But whether the duty to make a reasonable distress be created by the common law or by the statute, an action on the case will equally lie if there be a breach of that duty, and damage thereby arise to the person on whose goods the distress is made. (*Piggott* v. *Birtles*, 1 *M. & W.* 447; *Hutchins* v. *Chambers*, 1 *Burr.* 379; *Lynne* v. *Moody*, 2 *Stra.* 851; *Woodcroft* v. *Thompson*, 3 *Lev.* 48; 2 *Keny.* 204). He cannot sue in trespass (*Id.*), nor in trover, (*Whitworth* v. *Smith*, 1 *M. & Rob.* 193; *Buldish* v. *Vesse*, *id.*, 331; 4 *M. & Scott*, 552); unless the distress was of gold or silver of certain known value. (*Moor* v. *Munday*, 1 *Burr.* 590). Malice need not be proved. (*Field* v. *Mitchell*, 6 *Esp.* 74). It is no bar to the action that the tenant tendered the rent before the distress, (*Branscombe* v. *Bridges*, 1 *B. & Cres.* 145); or that between the distress and sale the parties came to an arrangement respecting the sale. (*Sells* v. *Hoare*, 1 *Bing.* 401; 8 *Moore*, 451, S. C.; *Willoughby* v. *Backhouse*, 2 *B. & Cres.* 821).

A landlord is liable to some damages in an action for an excessive distress, where the excess consists wholly in seizing growing crops, the probable produce of which is capable of being estimated at the time of the seizure; but the measure of damage is not the value of the crops, but the inconvenience and expense which the tenant sustains in being deprived of the management of them, or which he is put to in procuring sureties to a larger amount than he would otherwise have been in replevying the crops. (*Piggott* v. *Birtles*, 1 *M. & W.* 441).

The plea of not guilty by statute pleaded under stat. 11 Geo. II. c. 19, s. 21, (*post*, 306), in an action for an excessive distress, puts in issue not only the matter of justification, but the tenancy and ownership of the goods. (*Williams* v. *Jones*, 11 *Ad. & E.* 643).

Indictment for.

A man is not liable to a criminal prosecution for taking an excessive distress. (*R.* v. *Ledgingham*, 1 *Vent.* 104; 1 *Mod.* 200, S. C).

Action for distraining for more rent than is due.

The landlord will be liable to an action on the case if he distrains for more rent than is in arrear. This action is at common law, and is not founded on the 11 Geo. II. c. 19, s. 19, (*post*, 306). That section applies only where the distress is lawful in its inception, but some irregularity is committed in conducting it which would have rendered the party a trespasser by relation at common law. Where a landlord distrains for more than is due for rent, an action on the case lies at the suit of the tenant, though the goods distrained are of less value than the rent really due, and it is no defence that after distress and notice thereof and before the sale the landlord served a second notice on the tenant, stating the

amount really due, and that the distress was taken for that amount only, and would be sold unless that amount was paid. (*Taylor* v. *Henniker*, 12 *Ad. & Ell.* 488; *and see Crowder* v. *Self*, 2 *M. & Rob.* 190).

9. *How proceeded with till Sale.*

To a declaration for distraining for more rent than was due, defendant pleaded, that the whole sum distrained for was due and in arrear, concluding to the country, on which plaintiff joined issue:—On this issue it was held that defendant was not precluded from insisting on certain arrears, by the fact that, since they became due other arrears had become due, and had been distrained for. And this, although, on the first distress, the warrant and notice stated the distress to be for rent due up to a day named, being subsequent to those on which the arrears in question accrued: and although, on the second distress, the defendant stated, that it was for rent due since the last distress. (*Gambrell* v. *Earl Falmouth*, 4 *Ad. & Ell.* 73).

IX. Distress when taken, how to be proceeded with till Sale.

Inventory.

After having taken the distress, the party distraining proceeds to take an inventory of the goods and chattels he may deem sufficient to cover the amount of the rent distrained for, and the costs and charges of the distress and sale. Though usual and advisable, there does not seem to be absolute necessity to make out this inventory. If one be made out, and the landlord or broker remove or sell any goods not included in it, and without giving any notice of his removing those goods under the distress, he would be liable in action of trover. (*See Sims* v. *Tuffs*, 6 *C. & P.* 207; *Bishop* v. *Bryant*, *id*, 484).

Notice of distress.

After or before this inventory is made, it is necessary, in order to proceed to a sale of the distress, to give the tenant or owner of the goods distrained on, notice of the distress, with the cause of the taking, the amount of the rent distrained for, and informing the party that unless the rent and costs be paid in five days the same will be sold. This is required by the statute 2 W. & M. sess. 1, c. 5, s. 1, which also directs that it should be left at the chief mansion-house or other most notorious place on the premises charged with the rent distrained for. The notice should, it seems, be in writing. (*See Walter* v. *Rumbal*, 12 *Mod.* 76; 1 *Ld. Raym.* 53; 1 *Salk.* 247, S. C.). In the notice it is not necessary to mention when the rent became due for which the distress was made, (*Moss* v. *Gallimore*, *Dougl.* 279); and if mentioned, a mistake therein is immaterial. *Id.*; *Crowther* v. *Ramsbottom*, 7 *T. R.* 654; *see Lucas* v. *Nockells*, 4 *Bingh.* 729; 1 *M. & P.* 783; 10 *Bingh.* 157; 3 *M. & Sc.* 650; *Governors of Bristol Poor* v. *Wait*, 1 *Ad. & Ell.* 281; *Butler and Baker's case*, 3 *Rep.* 26 a).

A personal service on the owner of the goods will dispense with the necessity of leaving such notice at the dwelling-house, as directed by the act. (*Walter* v. *Rumbal*, 1 *Ld. Raym.* 53; 1 *Salk.* 247, S. C.)

The party distraining next proceeds to impound the goods taken.

Impounding distress.

As regards what amounts to an impounding, in a recent case where the agent of the landlord went into a field on the farm where the tenant's cattle were feeding, and, placing his hand upon one of the beasts, said he distrained the whole for the rent due, counted them, and took a note of the particulars, and then went away; on the following morning he left with the tenant a notice, stating that he had distrained the cattle thereunder mentioned, and had impounded them on the premises; it was held, that this constituted an impounding, and that a subsequent tender of the rent, and costs of distress, was too late. (*Maule*, J., dissentiente). (*Thomas* v. *Harries*, 1 *Scott, N. R.* 524).

Where to be impounded.

By the common law a distress might in general be impounded, in a proper pound, where the party pleased. (2 *Inst.* 106).

9. *How proceeded with till Sale.*

Cattle may be impounded in a pound *overt*(*a*) or public pound, or on the premises, where the owner may give them meat and drink without trespass to any other. But if they are put in pound *covert*, as in a house or private pound, the distrainer must keep them with meat and drink at his peril, and for which he shall have no satisfaction. (1 *Inst.* 47).

If the distress be of utensils of household, or such like *dead goods*, which may take harm by wet or weather, or be stolen away, there the distrainer must impound them in a house, or other pound *covert*, within three miles in the said county; for if he impound them in a pound *overt* he must answer for them. (1 *Inst.* 47).

Pound must be in a fit state.

Distrainers are bound to see that the pound to which they take the distress is in a fit state to receive it; and therefore, if the pound be wet and muddy, the distrainers are liable for any damage thereby caused to the distress, and it is no defence that the place was the manor pound, and was generally in a proper state. (*Wilder* v. *Speer*, 8 *Ad. & Ell.* 547).

Impounding on premises.

By the 11 Geo. II. c. 19, s. 10, any person distraining for rent may impound or otherwise secure the distress, of what kind soever it be, in such place, or on such part of the premises chargeable with the rent, as shall be most convenient; and may appraise and sell the same upon the premises, as any person before might have done off the premises, by virtue of statutes 2 W. & M. c. 5, and 4 Geo. II. c. 28.

In *Washborn* v. *Black* (11 *East*, 405), the law was admitted to be that without consent the distrainer ought either to have put the goods all into one room and kept possession of that only, or to have removed the goods out of the house; but very slight evidence of consent was admitted. (*See Swann* v. *Lord Falmouth*, 8 *B. & Cress.* 456.)

A tenant being in arrear for rent of a cottage, his landlord distrained the goods there, and locked up the cottage, and, after selling the goods, kept possession, the tenant saying he would "have done with it:" in an action by the tenant for an expulsion, the landlord was held to be justified in impounding the distress on the premises, and in locking up the cottage to secure the distress, but that he could not avail himself of the tenant's license to take possession, unless he specially pleaded it. (*Cox* v. *Painter*, 7 *Car. & P.* 767).

Impounding out of the county.

By the 52 Hen. III. c. 4, none shall cause any distress that he hath taken to be driven out of the county where it was taken; and if one neighbour do so to another of his own authority, (as for damage feasant, or rent-charge (2 *Inst.* 206),) he shall make fine as for a thing done against the peace; and if the lord so presume to do against the tenant, he shall be grievously punished by amerciament.

Before this act, at the common law, a man might have driven the distress to what *county* he pleased; which was mischievous for two causes: 1. Because the tenant was bound to give the beasts being impounded in an open pound sustenance, and being carried into another county by common intendment he could have no knowledge where they were. 2. He could not know where to have a replevy; but the party was, before this statute, driven to his action upon the case. (2 *Inst.* 106).

And albeit this statute be in the negative, yet if the tenancy be in one county, and the manor in another county, the lord may drive the distress which he taketh in the tenancy to his manor in the other county; for the tenant is out of both the said mischiefs; for the tenant, by doing suit and service to the manor by common intendment, may

(*a*) By pound *overt* is meant an open pound, as a public penfold made for that purpose, or an open field where the owner may go to his goods at pleasure without trespass. And by pound *covert* is meant a place covered, or close, as a house, or place where the goods are locked up or secured, where he cannot go to them at his pleasure.

know what is done there, and therefore may give his beast sustenance. And to know where to have his replevy, the bailiff of the manor usually drives the cattle distrained to the pound of the manor. And hereby it is to be noted, that a case out of the mischief is out of the meaning of the law, though it be within the latter. (2 *Inst.* 106; *Gilb.* 223).

9. How proceeded with till Sale.

And by the 1 & 2 P. & M. c. 12, s. 1, it is further enacted, that no distress of cattle shall be driven out of the hundred, rape, wapentake, or lathe, where such distress shall be taken, except it be to a pound *overt* within the same shire, not above three miles distant from the place where the said distress was taken; and no cattle nor other goods distrained for any cause at one time shall be impounded in several places, whereby the owner may be constrained to sue several replevies; on pain of 100*s.* to the party grieved, and treble damages.

Impounding out of the hundred, &c.

In several places.

In *Gimbart* v. *Pelah* (2 *Stra.* 1272), the defendant justified impounding cattle damage feasant. It appeared that the impounding was in another county. And *Lee*, C. J. held, it did not make him a trespasser, though it subjected him to the penalty of stat. 1 & 2 P. & M. c. 12; and the action should have been on the statute.

By the 2 W. & M. sess. 1, c. 5, s. 9, corn or hay, loose, &c. shall not be removed &c. from the place where seized, but kept there till replevied or sold. (*See Com. Dig. Distress* (D. 1), *post*, 303).

Corn or hay not removable.

By the 11 Geo. II. c. 19, s. 8 (*post*, 303), growing corn crops and product seized for rent, when ripe and cut, are to be impounded on the premises demised; and in case there be no proper place to impound them on the premises, then they are to be impounded in another place "as near as may be to the premises." (See *Peacock* v. *Purvis*, 2 *B. & B.* 362; 5 *Moore*, 79, S. C.; *Wright* v. *Dewes*, 1 *Ad. & Ell.* 641; *Swann* v. *Lord Falmouth*, 8 *B. & Crcs.* 456).

Growing corn, &c.

Cattle distrained may not be worked or used. And the principle has been carried so far, that it seems to be the better opinion, that even milch kine cannot be milked by the distrainer, in order to prevent them from being damaged; because the owner would perhaps have come to milk his cattle before they had sustained any material injury, and it is not necessary for the security of the distrainer, who, if the cattle die without his default, may make another distress. (*Bradby*, 241, *and the authorities there cited*).

Using the goods distrained.

So if the distress be lost by the act of God, as if the distress die in the pound, without any default in the distrainer, in such case he who made the distress may distrain again. (*Vasper* v. *Eddows*, 1 *Salk.* 248; 1 *Ld. Raym.* 719, S. C.).

Distress dying

It is the distrainer's own fault, if he put the distress in a pound which will not hold it; but he cannot justify the tying of cattle in the pound; and if he tie a beast, and it is strangled, he must pay damages. (S. C.).

Killed.

By the recent act of 5 & 6 Will. 4, c. 59, ss. 4, 5, & 6, parties impounding cattle are bound under a penalty to provide sufficient food for them; but the act gives a remedy for the recovery of the expense of the food by sale of the cattle, whether the impounding be in a pound overt or covert, and in this respect alters the common law.

Cattle impounded to be provided with sufficient food.

The statute however affords no remedy for the recovery of the amount of the damage for which the cattle were distrained, the distrainer can only get the single value of the food, and not the amount of the damage, as all the overplus beyond the value of the food and the expenses of the sale, is to be returned to the owner of the cattle.

The 5th section does not give any person a right to any payment; it merely allows charitable persons to supply food to impounded cattle, without being liable to an action for doing so. (*Mason* v. *Newland*, 9 *C. & P.* 575; and see the enactment, title "*Cattle and Animals*," *Vol. I.*)

By the common law it seems the goods when distrained on for rent ought to have been removed off the premises immediately, or at all events in a reasonable time after the taking. (*Mod. Ca.* 215). But now by the 11 Geo. II. c. 19, s. 10 (*ante*, 294), they need not be so.

Time of removal off the premises

9. *How proceeded with till Sale.*

By operation of that act, and the 2 W. & M. sess. 1, c. 5, s. 1, the removal ought to take place a reasonable time after the expiration of five days from the time of the taking, exclusive of the day of taking. (*Griffin* v. *Scott*, 2 *Ld. Raym.* 1424; 2 *Stra.* 717, S. C.; *Pitt* v. *Shew*, (4 *B. & Ald.* 208; *Wallace* v. *King*, 1 *H. Bla.* 15). In *Griffin* v. *Scott* (2 *Ld. Raym.* 1424), it was considered three days after the fifth day was an unreasonable time; but in *Pitt* v. *Shew* (4 *B & Ald.* 208), eight days after was considered reasonable: this reasonable time however being a question for a jury, no fixed rule can be laid down, each case depending on its own peculiar facts.

By consent, which is not unusual, the party distraining may keep in possession on the premises after the expiration of the time allowed for that purpose; otherwise he would become a trespasser. (*Winterbourne* v. *Morgan*, 11 *East*, 395). Slight evidence of such consent will suffice. (*Washborn* v. *Black*, 11 *East*, 405, n. a). The request of the tenant will not, it seems, justify the landlord in detaining the goods of a lodger upon the premises beyond the proper time of selling. (See *Fisher* v. *Algar*, 2 *C. & P.* 374). By the request not to remove, the tenant or owner of the goods does not waive any right of action he may have. (*Sells* v. *Hoare*, 1 *Bing.* 431; 8 *Moore*, 451, S. C.; *Willoughby* v. *Backhouse*, 2 *B. & C.* 821).

Notice of removal.

Generally speaking there does not appear to be any notice of removal requisite; where, however, the distress is on growing corn, hay, or product, as allowed by the 11 Geo. II. c. 19, s. 8 (*ante*, 278); the tenant must, in pursuance of the 9th section (*post*, 303) of that act, have notice of the place where the corn &c. is lodged given within a week after such lodging.

Appraisement, and how conducted.

It is necessary before selling that "the person distraining" shall, with the sheriff or undersheriff of the county, or with the constable of the hundred, parish, or place where such distress shall be taken, (who are required to be aiding or assisting therein), cause the goods distrained to be appraised by *two sworn appraisers*, (whom such sheriff, undersheriff, or constable, is empowered to swear,) who are to appraise the same truly according to the best of their understandings. (2 W. & M. sess. 1, c. 5, s. 1, *post*, 301).

The true construction of this statute, in requiring an appraisement, is, that the value of the goods might be ascertained by a fair estimate made at the time of the distress; and that, if on such valuation there should not be thought sufficient without them, the landlord might distrain beasts of the plough. Where, therefore, there had been such an appraisement on oath, and no evidence was offered to show that there was a sufficient distress without taking the beasts of the plough, the Court of Exchequer held, that it was not necessary that the other goods should all have been first disposed of before the latter were sold; unless they were wrongfully taken in the first instance, such sale was not a sufficient ground to support an action on stat. 51 Hen. III. stat. 4. (*Jenner* v. *Yolland*, 6 *Price*, 3; 2 *Chit. Rep.* 167, S. C.).

The enactment provision applies to all cases, and though the rent distrained for does not exceed 20*l.* (*Allen* v. *Flicker*, 10 *Ad. & Ell.* 640).

The person distraining must not be one of the appraisers, (*B. N. P.* 81; *Westwood* v. *Cowne*, 1 *Stark.* 172; *Lyon* v. *Weldon*, 2 *Bing.* 337; 9 *Moore*, 629, S. C.), unless indeed the tenant consent thereto, (*Bishop* v. *Bryant*, 6 *C. & P.* 484); and he may, it seems, in any case waive the necessity for an appraisement.

The appraisers must not be sworn before the constable of another parish. (*Avenell* v. *Croker*, 1 *M. & M. C. N. P.* 172; *Wallace* v. *King*, 1 *H. Bla.* 13). But where the premises partly lay in the hundred of Andover, and partly in the hundred of Kinalsey, the constable of Kinalsey was held the proper officer to administer the oath for the appraisement of the whole distress. (*Walter* v. *Rumbal*, 1 *Ld. Raym.* 53).

They must be sworn before the appraisement. (*Kenny* v. *May*, 2 *M. & Malk.* 56).

10. *Replevying the Distress.*

The constable must be present at the appraisement. (*Id.*).

The appraisement must be stamped. (*See* 1 *Moore*, 241; *Har. L. & T.* 369; 55 Geo. III. c. 184).

Growing crops and the other things distrainable under 11 Geo. 2, c. 19, s. 8 (*ante*, 278, and *post*, 303), cannot be appraised until *after* they are ripe, cut, gathered, cured, and made. (*Peacock* v. *Purvis*, 2 *B. & B.* 362; 5 *Moore*, 78, S. C.)

X. Replevying the Distress (*a*).

When to be adopted.

If the owner of the goods distrained on wishes to try the right of distress, and have his goods delivered back to him again, his course is to replevy them.

He could not try such right by paying under protest the sum distrained for, and then bringing an action for money had and received, (*see Lindon* v. *Hooper*, *Cowp.* 414; *Knibbs* v. *Hall*, 1 *Esp.* 84); unless, indeed, the distress was for more rent than was due, in which case such action for money had and received might lie for the excess. (*Ashmole* v. *Wainwright*, 2 *Gale & D.* 217).

If the owner of the goods does not care about getting them back again, or does not replevy, then if no part of the rent distrained for was due, he may try the right of distress by an action of trespass or trover; or if the goods were sold, by action on the case under the 2 W. & M. sess. 1, c. 5, s. 5.

If ever so small a sum of the rent distrained for was due at the time of the distress, or the distress was excessive or otherwise irregular, the remedy for it is not by replevin, but by action on the case, and sometimes trespass. (*See* 1 *Chit. Pl.* 164; *Whitworth* v. *Smith*, 5 *C. & P.* 250, *post*, 307).

Time of replevy.

The replevy may be made at any time before the goods are actually sold. (*Jacob* v. *King*, 1 *Marsh.* 135; 5 *Taunt.* 457, S. C.)

Who to grant replevin.

As to the party to grant the replevin by stat. 1 & 2 P. & M. c. 12, s. 3, the sheriff of every county shall, at his first county day, or in two months after he hath received the patent of office, appoint and proclaim in the shire town four deputies at the least, dwelling not above twelve miles one distant from another, to make replevies; on pain of 5*l.* for every month that he shall lack such deputy or deputies, half to the king and half to him that shall sue in any court of record.

One of the sheriffs of London has power to grant replevin without his companion, (*Thompson* v. *Farden*, 1 *Man. & G.* 535; 1 *Scott, N. R.* 215).

Where the distress is made within a franchise, the lord of which has cognizance of plaints on replevin, the replevin must be granted by the lord. Thus where an action on the case was brought for distraining plaintiff's cattle on a farm, for rent due to D. for the farm, and selling them after a replevin was granted by the sheriff, and paying the proceeds to D., it was held a good plea that, from time immemorial, the farm has been parcel of the manor of F., and F. parcel of the honour and lordship of C., of which E. is the lord; and that from time immemorial E., and all whose estate &c., have had cognizance of pleas and plaints in replevin, in the courts of the manor, to be holden from three weeks to three weeks, by plaints, to be there instituted; and have re-

(*a*) As to when replevin will not lie to obtain goods seized under a justice's warrant, &c., *see post*, "*Distress by Justices' Warrant*," *p.* 330.

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plevied and granted deliverance of cattle, &c., as the sheriff might, in his county, before the statute of Marlbridge; and that no sheriff, &c., might enter the honour except in default of the bailiff: that such court baron of the lord of the manor of F. had been, from time immemorial, holden from three weeks to three weeks; that E. made no default in replevying or granting deliverance of the cattle; that the sheriff, before he replevied, did not require E. to replevy or grant deliverance; and that none but the sheriff replevied or granted deliverance, and the plea is good, although it does not allege that the cattle were impounded within the franchise. (*Mounsey* v. *Dawson*, 6 *Ad. & El.* 752).

Under the statute of Marlbridge, 52 H. 3, c. 21, the declaration ought to allege notice to the lord of the franchise, or to his officer, and default made by the lord or officer in delivering the cattle; and, *semble*, that this should be an actual default, and not merely a delay arising from the ordinary course of proceeding in the lord's court. (*Id.*)

Surety to be taken on replevin.

The sheriff or other officer having authority to grant replevins (*b*), shall, in every replevin of distress for rent, take in his own name from the plaintiff and two sureties, a bond in double the value of the goods distrained, to be ascertained on the oath of one witness not interested in the goods, and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods distrained, in case a return shall be awarded, before any deliverance be made of the distress; and the sheriff shall assign such bond *to the avowant, or person making conusance.* (11 Geo. II. c. 19, s. 23) (*c*).

The bond may be taken and assigned by any officer who has power to grant replevin. (*Thompson* v. *Farden*, *supra.*)

What cases within the act.

A rent charge is within the statute. (*Short* v. *Hubbard*, 2 *Bing.* 349; 9 *Moore*, 667; 10 *Moore*, 107, S. P. overruling *Bulpit* v. *Clarke*, 1 *New R.* 57).

Form of bond, &c.

Although the statute directs the bond to be taken with two sureties, yet a bond by one surety only has been holden good (*d*). (*Austen* v. *Howard*, 7 *Taunt.* 28, 327). And at all events he is not bound to take more than one pledge on a replevin for distraining cattle damage feasant. (*Huckes* v. *Gordon*, 1 *C. & M.* 58).

The words "then and there" usually inserted in the conditions of replevin bonds are not strictly proper. (*Jackson* v. *Hanson*, 8 *M. & W.* 477). It is apprehended, however, that the insertion of them does not invalidate the bond.

(*b*) A party obtaining a replevy of goods under a false authority would be guilty of a rescous. *Trevannion's case*, 11 *Mod.* 32.

(*c*) *Avowry* is where one takes a distress, and the person distrained sues a replevin; then he that took the distress must *avow* and justify in his plea, for what cause he took it, if he took it in his own right; and this is called an *avowry;* if he took it in the right of another, then when he hath showed the cause, he must make *conusance* of the taking, as bailiff or servant to him in whose right he took it. *Termes de la Ley.*

(*d*) In *Richards* v. *Acton*, a rule was made on the replevin clerk, the under-sheriff, and the clerk of the county court, to discover the names of the pledges taken upon granting the replevin in this cause, and to show cause why they should not pay the defendant 57*l.* 15*s.*, being the damages and costs recovered by him in this cause, together with the costs of the application. The distress was for rent; and on replevin brought the defendant had a verdict with the damages and costs above mentioned. On cause being shown, the court held that as well the high-sheriff and under-sheriff as the replevin clerk (who is their deputy) are answerable to the defendant in replevin for the sufficiency of the pledges; they therefore discharged the rule against the county court clerk, but with regard to the high and under sheriff, and the replevin clerk, they made the rule absolute. *Richards* v. *Acton*, 2 *Bla. Rep.* 1220.

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Where a replevin bond was taken in a penalty greater than the amount of goods distrained, and with a clause in the condition to indemnify the sheriff for granting the replevin; and it appeared that the bond had been executed in September, and assigned in February, but no application to set it aside was made till Easter Term:—The court refused to set it aside on those grounds, but intimated that it was objectionable that the bond should be taken in such an amount; and that the frequent practice so to do, and the delay, were the only causes for not interfering to set it aside. (*Miers* v. *Lockwood*, 9 *Dowl.* 975).

Sheriff after bond taken, to make deliverance.

The sheriff having taken bond from the plaintiff in replevin as aforesaid, he ought forthwith to make deliverance of the goods or cattle distrained; and if the distress be drawn into a house or other stronghold, the sheriff or his bailiff, after demand made for deliverance of the distress, may break open the house to replevy them; for though a man's house is privileged by common law for himself, his family, and his own goods, so that the sheriff cannot break it open to attach any of them, in a civil action at the suit of a private person, yet a man's house could not privilege or protect the goods of another person unjustly taken, so as to prevent the officer to make replevin; because the privilege and security of a man's house could but protect his own goods. (2 *Inst.* 140).

Neglect of sheriff to take security.

If the sheriff deliver up the goods to the party replevying the same without the security required by the 11 Geo. II. c. 19, he is not liable to an attachment, but the landlord or defendant in replevin, if damnified, may have his remedy against him by action on the case. (*R.* v. *Lewis*, 2 *T. R.* 617).

Liability of sheriff for taking insufficient sureties, &c.

So the sheriff, under-sheriff, and replevin clerk are all responsible to the landlord for the sufficiency of the sureties in the replevin bond, as also for the sufficiency of the pledges, under the stat. *Westm.* 2, c. 2; and an action on the case may be maintained against him if they or either be not sufficient sureties. (See *B. P. N.* 60). But the sheriff is not liable if the sureties were to all appearances, and after his using reasonable diligence and inquiry, sufficient at the time, though it turn out afterwards otherwise. (*Hindle* v. *Blades*, 5 *Taunt.* 225; 1 *Marsh.* 27, S. C.; *Scott* v. *Waithman*, 3 *Stark.* 168). If a person known to the sheriff make inquiries as to the credit or reputation of a tradesman and the value of his stock, and communicate the result of such inquiry to the sheriff, if it be favourable, the latter need not make a personal inquiry. (*Sutton* v. *Waite*, 8 *Moore*, 28). In taking sureties the sheriff is to exercise a reasonable discretion in deciding upon their sufficiency; and, in an action for taking insufficient sureties, it is for the jury to decide whether he has used such discretion or not. The sheriff or replevin clerk is not bound to go out of his office to make inquiries: but, if the sureties are unknown to him, he ought to require information, beyond their own statement, as to their sufficiency. Where persons of respectable appearance are brought to the replevin clerk as sureties, by the attorney's clerk on behalf of the party replevying, their circumstances being known both to the attorney's clerk and to the replevin clerk, and the latter causes the sureties to make affidavit in detail as to their sufficiency, with which he is satisfied, and an action is afterwards brought against the sheriff for taking insufficient sureties, the jury may properly find that the inquiry made does not excuse the sheriff. (*Jeffery* v. *Bastard*, 4 *Ad. & Ell.* 823). The sheriff is it seems liable, if one of the sureties was insufficient. (*Scott* v. *Waithman*, 3 *Stark.* 168). In such action the penalty of the bond is the limit of damages. (*Jeffery* v. *Bastard*, 4 *Ad. & Ell.* 823; *Yea* v. *Lethbridge*, 4 *T. R.* 433; *Evans* v. *Brander*, 2 *Bing.* 250; 2 *H. Blac.* 547). If notice were previously given to the sheriff, it seems the costs of an ineffectual action against the sureties might be recovered. (See *Baker* v. *Garratt*, 3 *Bing.* 56).

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Assignment of bond.

The sheriff is directed by the above statute to assign the bond to the avowant or person making conusance, (see *Dias* v. *Freeman*, 5 *T. R.* 195 ; *Middleton* v. *Sandford*, 4 *Camp.* 36 ; 1 *B. & P.* 378), in the same manner as a bail bond is assigned, and the party afterwards may bring an action on the bond if forfeited in his own name ; and the court may by rule give such relief to the parties as may be agreeable to justice and reason. Where a replevin bond has been assigned, the assignee is not obliged to sue in the court into which the plaint has been removed by re. fa. lo. (*Nelson* v. *Hartley*, 7 *Dowl. P. C.* 461). Where one of the sureties was a material witness for the plaintiff, the court of Common Pleas allowed another to be substituted for him. (*Bailey* v. *Bailey*, 1 *Bing.* 92). Taking an assignment of the replevin bond is not a waiver of the remedy against the sheriff, if the bond be not in compliance with the act, or the sureties were insufficient. (*See* 1 *Saund.* 195, e ; *Baker* v. *Garratt*, 3 *Bing.* 56 ; 10 *Moore*, 324, S. C.)

Liability of sureties, and actions on the bond

The condition in a replevin bond, for prosecuting the suit with effect, means the prosecuting it to a not unsuccessful termination. In a declaration in an action on a replevin bond, the breach assigned was, that the defendant did not appear at the next county court, and then and there prosecute his suit with effect. Held, that the breach was not well assigned, it being consistent therewith that the suit might have been begun at the next county court, and be still pending. (*Jackson* v. *Hanson*, 8 *M. & W.* 477).

When a sheriff's bond had been assigned to the plaintiff above, and he declared against the defendant above, for not appearing and prosecuting his suit with effect, and the plaintiff above had appeared in the county court, according to the sheriff's summons, and the defendant above pleaded, that the plaintiff above had entered an appearance to the plaint of the defendant according to the practice of the said court, and that the cause was then pending:—It was held, that this plea was bad on special demurrer, because neither the declaration nor the bond made mention of delay of proceeding, on which only the defendant had taken issue; and because, if the plea were meant as an excuse for not appearing, it ought to have set out the practice of the particular county court, and whereby he was excused. (*Rider* v. *Edwards*, 3 *Scott, N. R.* 456).

It is no breach of a replevin bond conditioned to appear at the next county court, and "then and there to prosecute the suit with effect, that the plaint has been removed by re. fa. lo., and that after the removal the suit abated by the death of the plaintiff in replevin. (*Morris* v. *Matthews*, 1 *G. & D.* 677). Where more is levied under a replevin bond than the assignee of the sheriff is entitled to, the court will not grant a rule to make the assignee refund, though the overplus is alleged to be due to a second execution creditor of the same defendant. (*Bowser* v. *Lloyd*, 9 *Dowl.* 1029). Where an action was brought against the pledges before the bond was forfeited the court refused to set aside the proceedings, saying that the matter might be pleaded as a defence to the action. (*Anon.*, 5 *Taunt.* 776).

Staying proceedings.

The terms on which the court will stay proceedings on a replevin bond, at the instance of the sureties, are the payment of the appraised value of the goods, if that is less than the amount of rent due, the double costs, and the costs of application. (*Miers* v. *Lockwood*, 9 *Dowl.* 976).

An action on replevin bond was stayed, on the application of the sureties, upon their paying into court the value of the goods distrained, together with the costs ; such value to be ascertained by the prothonotary. (*Gingell* v. *Turnbull*, 3 *Bing. N. C.* 881 ; 5 *Scott*, 153).

XI. Sale of the Distress and Costs.

When impounded, the goods were formerly only in the nature of a pledge or security to compel the performance of satisfaction; and upon this account it hath been held, that the distrainer is not at liberty to work or use a distrained beast. And thus the law still continues with regard to beasts taken *damage feasant*, and distresses for suit or services, which must remain impounded till the owner make satisfaction, or contests the right of distraining, by replevying the chattels. (3 *Bla. Com.* 13).

Distress in nature of a pledge.

Distress taken for an offence presented in the leet may of common right be sold, because it is a court of record; but otherwise it is of distresses in courts that are not of record. (*Rex* v. *Speed*, 12 *Mod.* 330).

Sale of distress for offence presented in leet.

A distress for an amercement in a court-baron cannot be sold; but in such a case a distress infinite shall go. (1 *Bulst.* 52, 53).

For amercement in court-baron.

In like manner, before stat. 2 W. & M. sess. 1, c. 5, distress for rent in arrear could not be sold, but only detained till payment of the rent: but the said statute, sect. 1, reciting that "the most ordinary and ready way for recovery of arrears of rent is by distress, yet such distresses not being to be sold, but only detained as pledges for enforcing the payment of such rent, the persons distraining have little benefit thereby;" therefore enacts that "where any goods or chattels shall be distrained (*a*) for any rent reserved and due upon any demise, lease, or contract whatsoever, and the tenant or owner of the goods so distrained shall not, within five days next after such distress taken, and notice thereof (with cause of such taking) left at the chief mansion-house, or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient security to be given to the sheriff according to law, that then in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining shall and may, with the sheriff or under-sheriff of the county, or with the constable of the hundred, parish, or place where such distress shall be taken (who are hereby required to be aiding and assisting therein), cause the goods and chattels so distrained to be appraised by two sworn appraisers (whom such sheriff, under-sheriff, or constable are hereby empowered to swear), to appraise the same truly, according to the best of their understandings; and after such appraisement shall and may lawfully sell the goods and chattels so distrained for the best price that can be gotten for the same, towards the satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement, and sale, leaving the overplus (if any) in the hands of the said sheriff, under-sheriff, or constable, for the owner's use."

Sale of goods distrained for rent.

2 W. & M. sess. 1, c. 5.

After complying with the requisites pointed out by this statute, the landlord may proceed to a sale. But if the distress taken was a subject distrainable at common law he is not obliged to proceed to such a sale, but he may as at common law retain such distress for an unlimited period as a pledge. (*Hudd* v. *Ravenor*, 2 *B. & B.* 662; 5 *Moore*, 542, S. C.; *Lear* v. *Edmonds*, 1 *B. & Ald.* 159).

Sale of things distrainable at common law not compulsory.

By the 11 Geo. II. c. 19, s. 10, (*ante*, 294), the sale may take place on the premises, or it may elsewhere.

Place of sale.

The sale must not take place within the five days, otherwise an action might be maintained, on the equity of the 2 W. & M., against the

Time of sale.

(*a*) See "*Forms*," *post*, No. 1 to 6.

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parties selling. (*Wallace* v. *King*, 1 *H. Blac.* 13; *Pitt* v. *Shew*, 4 *B. & Ald.* 208). The five days are to be reckoned exclusive of the first; (*Pitt* v. *Shew*, 4 *B. & Ald.* 208; *Wallace* v. *King*, 1 *H. Blac.* 13; *Harper* v. *Taswell*, 6 *C. & P.* 166); therefore the sale must not take place until the sixth day, inclusive of the day of taking; and five times twenty-four hours must have elapsed from the time of the original seizure.

Remaining on premises after five days.

A reasonable time after the expiration of the five days is allowed to the landlord to remain on the premises for appraising and selling the goods distrained, for he cannot appraise or sell until after the five days have elapsed, and the act directs he shall sell for the best price; the making the appraisement, and notifying the intended sale and selling for the best price, must take some time after the expiration of the five days, and it is for a jury to say, in each case, whether more than reasonable time has been taken. (*Pitt* v. *Shew*, 4 *B. & Ald.* 208). By the consent of the tenant the landlord will be justified in remaining on the premises beyond the time otherwise allowable. If the goods remain on the premises for an unreasonable time without the tenant's consent, the distrainer, after the expiration of that time, becomes a trespasser. (*Griffin* v. *Scott*, 2 *Stra.* 717; 2 *Ld. Raym.* 1424; *Winterbourne* v. *Morgan*, 10 *East*, 395).

Sale by auction.

The sale need not be by auction.

Price of sale.

Upon the equity of the 2 W. & M. sess. 1, c. 5, s. 1, the distrainer must sell for the *best price* that can be obtained for the goods, and an action lies if he do not. The price at which the goods were appraised will be presumed to be the best until the contrary is proved. (*Walter* v. *Rumbal*, 4 *Mod.* 380; *Com. Dig. Distress* (D. 8).)

Order of sale.

It appears that there is no order required by law to be observed in the sale of the goods, as that the beasts of the plough shall be postponed to the other goods; and therefore it is not a cause of action that the beasts of the plough have been sold before the other goods were disposed of, where the distress itself was not wrongful. (*Jenner* v. *Yolland*, 6 *Price*, 5; 2 *Chit. Rep.* 167, S. C.)

Sheriff or constable need not be present at.

It is not necessary that the sheriff or constable should be present at the sale, but the appraisers being regularly sworn, may with the distrainer proceed to sell. (*Walter* v. *Rumbal*, 4 *Mod.* 321; *Com. Dig. Distress* (D. 8).)

Sale of corn or hay cut.

At common law such things only can be distrained as may be restored to the owner in the same plight as they were in at the time of taking them, and for this reason sheaves and shocks of corn were not distrainable.

But by stat. 2 W. & M. sess. 1, c. 5, s. 3, persons having rent arrear on any demise, lease, or contract, may seize and secure any sheaves or cocks of corn, or corn loose or in the straw, or hay, being in any barn or granary, or upon any hovel, stack, or rick, or otherwise upon any part of the land charged with the rent, and may lock up or detain the same in the place where found, in the nature of a distress, so as the same be not removed to the damage of the owner out of the place where found and seized, but be kept there (as impounded) till replevied or sold. This provision extends to corn in whatever state it may be, whether thrashed or not. (*Lutw.* 214).

This section, as before noticed, (*ante*, 279), has introduced a new distrainable subject, which is not to be treated in the same way as those subjects which were distrainable at common law. The things distrainable under this section are to be locked up or detained in the place *where found* as in the nature of a distress until replevied, and in no default of replevying *must*, it should seem, be *sold* in five days, and *cannot be removed*, so that this species of subject of distress differs from that at common law, in respect of its being legally both incapable of removal, and also of being kept for an indefinite period till payment of the rent. (*Piggott* v. *Birtles*, 1 *M. & W.* 448).

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Sale of growing crops, &c.

By stat. 11 Geo. II. c. 19, s. 8, the landlord or his steward, or other person empowered by him, may take and seize any cattle or stock feeding on any common appendant or appurtenant, or belonging to the premises, corn, grass, hops, roots, fruits, pulse, or other product growing on the estate, as a distress for rent; and the same may cut, gather, make, cure, carry, and lay up when ripe in the barns or other proper place on the premises; and if there shall be no barn or proper place on the premises demised, then in any other barn or proper place which he shall procure as near as may be to the premises; the appraisement whereof shall be taken when cut, gathered, cured, and made, and not before.

Sect. 9. And notice of the place where the goods so distrained shall be lodged, shall in one week after the lodging thereof be given to the tenant, or left at the last place of his abode. And if the tenant shall pay or tender to the landlord, or his steward or receiver of rents, the whole of the arrears of rent and incidental expenses, after such distress has been taken, and at any time before it shall be ripe, and cut, cured, or gathered, the distress shall be thereupon delivered up to the tenant.

This statute, like 2 W. & M. c. 5, s. 3, has introduced a new subject of distress which was not distrainable at common law, and which must therefore be dealt with in strict accordance with the statute. The growing crops and other things distrained under this statute cannot be removed off the demised premises, except sub modo, that is in default of there being a proper place for lodging them on the premises. The landlord is not empowered to appraise and sell the growing crops &c. until *after* they are ripe, cut, gathered, cured, and made. (*Percevell* v. *Purvis*, 2 *B. & B.* 362; 5 *Moore*, 79, *S. C.*) And consequently a tenant, whose standing corn and growing crops have been seized as a distress for rent before they were ripe, cannot maintain an action upon the case under 2 W. & M. c. 5, s. 28, against the landlord or his bailiff for selling the same before five days, or a reasonable time have elapsed after the seizure, such sale being wholly void. (*Owen* v. *Legh*, 3 *B. & Ald.* 470). But in such a case the owner could only recover the amount of the damage actually sustained, the case being within the 11 Geo. II. c. 19, s. 19. Therefore where a landlord seized growing crops, and sold them before they were cut for the full value which they would have fetched if sold at the proper time, and the rent due exceeded the amount for which the crops were sold, it was held, that in an action of trover by the tenant, he was entitled to nominal damages only. (*Proudlove* v. *Twemlow*, 1 *C. & M.* 326; and see *Notts* v. *Curtis*, 2 *C. & J.* 364, n.; *Biggins* v. *Goode*, *ib.*)

A notice must also, as required by the act, be given of the place where the crops &c. distrained shall be lodged within one week after the lodging thereof, and as soon as these different provisions have been complied with, the distress *must*, as it seems, be then sold. (*Piggott* v. *Birtles*, 1 *M. & W.* 449).

Costs of distress.

Costs of Distress.]—By the words of the 2 W. & M. sess. 1, c. 5, s. 1, the distrainer for rent may deduct from the amount of the produce of the goods on sale, besides the rent, all reasonable charges attending the distress.

The man in possession of the goods, where the rent does not exceed 20*l.*, is in general to be paid 2*s.* 6*d.* per day, if the tenant keeps him, and 3*s.* 6*d.* if he keeps himself.

Poundage.

By the 1 & 2 P. & M. c. 12, s. 2, "no person or persons shall take for keeping in pound, impounding, or poundage of any manner of distress, above the sum of 4*d.* for any one whole distress that shall be so impounded; and where less hath been used, there to take less; upon the pain of 5*l.*, to be paid to the party grieved, over and beside such money

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as he shall take above the sum of 4*d.*; any usage or prescription to the contrary in anywise notwithstanding."

This enactment does not extend to cases where the goods are impounded *on* the premises by virtue of the 11 Geo. II. c. 19, s. 10, *ante*, 294. (*Child* v. *Chamberlain*, 5 *B. & Adol.* 1049; 3 *N. & M.* 520, S. C.)

57 Geo. 3, c. 93.

Where rent due does not exceed 20*l.*

Stat. 57 Geo. III. c. 93, intituled "*An Act to regulate the Costs of Distresses levied for Payment of small Rents,*" after reciting that "divers persons acting as brokers, and distraining on the goods and chattels of others, or employed in the course of such distresses, have of late made excessive charges, to the great oppression of poor tenants and others; and it is expedient to check such practices," enacts, that "no person whatsoever making any distress for rent, where the sum demanded and due shall not exceed the sum of 20*l.* for and in respect of such rent, nor any person whatsoever employed in any manner in making such distress, or doing any act whatsoever in the course of such distress, or for carrying the same into effect, shall have, take, or receive out of the produce of the goods or chattels distrained upon and sold, or from the tenant distrained on, or from the landlord, or from any other person whatsoever, any other or more costs and charges for and in respect of such distress, or any matter or thing done therein, than such as are fixed and set forth in the schedule hereunto annexed (*post*, 305), and appropriated to each act which shall have been done in the course of such distress; and no person or persons whatsoever shall make any charge whatsoever for any act, matter, or thing mentioned in the said schedule, unless such act shall have been really done."

Remedy before a justice.

Sect. 2. "If any person or persons whatsoever shall in any manner levy, take, or receive from any person or persons whatsoever, or retain or take from the produce of any goods sold for the payment of such rent, any other or greater costs and charges than are mentioned and set down in the said schedule, or make any charge whatsoever for any act, matter, or thing mentioned in the said schedule and not really done, it shall be lawful for the party or parties aggrieved by such practices to apply to any one justice of the peace for the county, city, town, and acting for the division where such distress shall have been made, or in any manner proceeded in, for the redress of his, her, or their grievances so occasioned; whereupon such justice shall summon the person or persons complained of to appear before him at a reasonable time to be fixed in such summons; and such justice shall examine into the matter of such complaint by all legal ways and means, and also hear in like manner the defence of the person or persons complained of; and if it shall appear to such justice that the person or persons complained of shall have levied, taken, received, or had other and greater costs and charges than are mentioned or fixed in the schedule hereunto annexed (see form, *post*), or made any charge for any matter or thing mentioned in the said schedule, such act, matter, or thing not having been really done, such justice shall order and adjudge treble the amount of the monies so unlawfully taken, to be paid by the person or persons so having acted to the party or parties who shall thus have preferred his, her, or their complaint thereof, together with full costs; and in case of non-payment of any monies or costs so ordered and adjudged to be paid, such justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the party or parties ordered to pay such monies or costs, rendering the overplus (if any) to the owner or owners, after the payment of the charges of such distress and sale; and in case no sufficient distress can be had, such justice shall, by warrant under

Penalty or distress (*a*).

Imprisonment (*b*).

(*a*) See the 5 Geo. IV. c. 18, *post*, 327.

(*b*) See tit. "*Commitment in Execution*," *Vol. I.*

his hand, commit the party or parties to the common gaol or prison within the limits of the jurisdiction of such justice, there to remain until such order or judgment be satisfied."

11. *Sale of the Distress and Costs.*

57 Geo. 3, c. 93.

Justices may summon witnesses

Sect. 3. "It shall be lawful for such justice, at the request of the party complaining or complained against, to summon all persons as witnesses, and to administer an oath to them, touching the matter of such complaint or defence against it; and if any person or persons so summoned shall not obey such summons, without any reasonable or lawful excuse, or refuse to be examined upon oath, or if a Quaker, upon solemn affirmation, then every such person so offending shall forfeit and pay a sum not exceeding 40*s*., to be ordered, levied and paid in such manner and by such means, and with such power of commitment, as is hereinbefore directed as to such order and judgment to be given between the party or parties in the original complaint, excepting so far as regards the form of the order, and hereinafter provided for."

Penalty.

If complaint unfounded, justice may give costs to party complained against.

Sect. 4. "It shall be lawful for such justice, if he shall find that the complaint of the party or parties aggrieved is not well founded, to order and adjudge costs, not exceeding 20*s*., to be paid to the party or parties complained against, (see form of order, *post*, No. 18), which order shall be carried into effect, and levied and paid in such manner, and with like power of commitment, as is hereinbefore directed as to the order and judgment founded on such original complaint: provided always, that nothing herein contained shall empower such justice to make any order or judgment against the landlord, for whose benefit any such distress shall have been made, unless such landlord shall have personally levied such distress: provided always, that no person or persons who shall be aggrieved by any distress for rent, or by any proceedings had in the course thereof, or by any costs and charges levied upon them in respect of the same, shall be barred from any legal or other suit or remedy which he, she or they might have had before the passing of this act, excepting so far as any complaint to be preferred by virtue of this act shall have been determined by the order and judgment of the justice before whom it shall have been heard and determined, and which order and judgment shall and may be given in evidence, under the plea of the general issue, in all cases where the matter of such complaint shall be made the subject of any action."

Landlord not liable unless he personally levied distress.

Parties not barred of other legal remedies.

General issue.

Proof of justice's order.

Sect. 5. "Such orders and judgments on such complaints shall be made in the form in the schedule hereunto annexed, and may be proved before any court by proof of the signature of the justice to such order and judgment; and such orders as regard persons who may have been summoned as witnesses shall be made in such form as to such justice shall seem most fit and convenient."

Brokers to give copies of charges to persons distrained.

Sect. 6. "Every broker or other person who shall make and levy any distress whatsoever shall give a copy of his charges, and of all the costs and charges of any distress whatsoever, signed by him, to the person or persons on whose goods and chattels any distress shall be levied, although the amount of the rent demanded shall exceed the sum of £20."

Copy of act to be hung up in sessions house.

Sect. 7. "A fair printed copy of this act shall be hung up in some convenient place in such halls or rooms where the justices of each and every county in England and Wales shall hold either their quarter or other sessions."

Schedule of costs.

SCHEDULE of the Limitation of Costs and Charges on Distresses for Small Rents.

	£	s.	d.
Levying distress	0	3	
Man in possession, per day	0	2	

Appraisement, whether by one broker or more, 6*d*. in the £1 on the value of the goods.

Stamp, the lawful amount thereof.

12. *Irregularity in the Proceedings, &c.*

	£	s.	d.
All expenses of advertisements, if any such . . .	0	10	0
Catalogues, sale and commission, and delivery of goods, 1*s.* in the £1 on the net produce of the sale.			

7 & 8 Geo. 4, c. 17, extends 57 Geo. 3 to other distresses than for rent.

The 7 & 8 Geo. IV. c. 17, extends the provisions of this act of 57 Geo. III. to distresses for rates, taxes, impositions, and assessments.

After a distress made by a broker in a case within the above act, the rent and charges may still be tendered to the landlord. (*Smith* v. *Goodwin*, 4 *B. & Adol.* 413; 2 *N. & M.* 114, S. C.)

The 6th section of the act, compelling brokers to give copies of their charges of distress, applies only to cases where the goods have been sold. (*See Hills* v. *Street*, 5 *Bingh.* 39).

And a landlord who does not personally interfere in the distress is not liable for the neglect of the broker employed by him to make a distress, in not delivering a copy of the charges. (*Hart* v. *Leach*, 1 *M. & W.* 560).

Overplus.

Overplus.]—After complying with all the foregoing requisites, if there be any overplus, after paying the rent and charges of the distress, appraisement and sale, the same should be immediately left in the hands of the sheriff, undersheriff or constable of the hundred, parish or place where the distress was taken, for the owner's use, (see 2 W. & M. sess. 1, c. 5, s. 1, *ante*, 301), otherwise a special action on the case will lie.

The overplus, which by the stat. 2 W. & M. sess. 1, c. 5, s. 2, is directed to be left in the hands of the sheriff, undersheriff, or constable, on a distress, for the owner's use, means the overplus after the payment of the rent and of the *reasonable* charges. Therefore, in an action on the case for not leaving the overplus in the hands of the sheriff, &c., for the plaintiff's use, the plaintiff may question the reasonableness of the charges. (*Lyon* v. *Tomkins*, 1 *M. & W.* 603). And where the plaintiff herself received from the broker the balance remaining after payment of the rent and the actual charges, making no objection as to their reasonableness, it was held, that it was a question for the jury whether she accepted such balance in satisfaction, and if not, whether it was sufficient to satisfy the real balance; but that it was not correct to lay it down as matter of law that such payment and receipt substantially satisfied the requisitions of the statute.

XII. Irregularity in the Proceedings and Tender of Amends.

Irregularity in distresses.

The 11 Geo. II. c. 19, s. 19, declares, that where any distress shall be made for any kind of rent justly due, and any irregularity shall be *afterwards* done by the party distraining, or his agent, the distress itself shall not be therefore deemed unlawful, nor the distrainer a trespasser *ab initio*, but the party aggrieved may recover satisfaction for the special damage and no more in an action of trespass or on the case, at the election of the plaintiff; and if he recover, he shall have full costs.

Tender of amends.

Sect. 20. But no tenant shall recover on such action if tender of amends hath been made before the action brought.

General issue.

Sect. 21. In all actions of trespass or upon the case to be brought against any person or persons entitled to rents or services of any kind, his, her, or their bailiff or receiver, or other person or persons, relating to any entry by virtue of this act or otherwise upon the premises chargeable with such rents or services, or to any distress or seizure, sale or disposal of any goods or chattels, thereupon it shall and may be lawful to and for the defendant or defendants in such actions to plead the general issue, and give the special matter in evidence, any law or usage to the contrary notwithstanding.

If the first entry be illegal and unjustifiable, as if no rent whatever was due, (*see Whitworth* v. *Smith*, 5 *C. & P.* 250); or if the party distraining should break open the outer door or the like, his subsequent proceedings would not be protected, it should seem, under this act, and he would be a wrong-doer in every respect. (*See Avenall* v. *Croker*, *M. & M.* 173). Trespass may be maintained if the distrainer keep too long in possession; (*Winterbourne* v. *Morgan*, 11 *East*, 395); or if he expel the tenant the premises, (*Etherton* v. *Popplewell*, 1 *East*, 139); or if he distrain fixtures. (*Danby* v. *Harris*, 1 *G. & Dav.* 234).

12. *Irregularity in the Proceedings, &c.*

Decisions on 11 Geo. 2, c. 19, s. 19.

Where a distress is made after a sufficient tender, and there has been no subsequent demand, trespass or case lies. (*Ladd* v. *Thomas*, 12 *Ad. & Ell.* 117; *Branscombe* v. *Bridges*, 1 *B. & Cres.* 145). But for any subsequent irregularity, the remedy is by special action on the case.

The sale of goods under a distress, after the service of an irregular notice of replevy, without removing the goods off the premises, is not a conversion to enable the tenant to maintain trover. (*Cuckson* v. *Winter*, 2 *M. & R.* 313).

The enactment is not confined to distresses on goods. (*Proudlove* v. *Twemlow*, 1 *C. & M.* 329).

Damages.

The enactment, it will be observed, entitles the plaintiff to recover only the damage actually sustained by him in cases where the distress was originally lawful, but there has been some subsequent irregularity. Where a landlord seized and sold, under a distress for rent, growing crops, which were afterwards taken away by the purchaser, and it appeared that the crops were sold for the full value which they would have fetched if sold at the proper time, and the rent proved to be due exceeded the amount for which the crops sold; it was held, in an action of trover brought by the tenant, that he was entitled to nominal damages only. (*Proudlove* v. *Twemlow*, 1 *C. & M.* 326).

A landlord is liable to some damages in an action on the case for an excessive distress, where the excess consists wholly in seizing growing crops, the probable produce of which is capable of being estimated at the time of the seizure; but the measure of damages is not the value of the crops, but the inconvenience and expense which the tenant sustains in being deprived of the management of them, or which he is put to in procuring sureties to a larger amount than he would otherwise have been in replevying the crops. (*Piggott* v. *Birtles*, 1 *M. & W.* 441).

In an action for an excessive distress, the question is, what the goods seized would have sold for at a broker's sale. If it be excessive, the plaintiff is entitled to recover the fair value of them. (*Wells* v. *Moody*, 7 *C. & P.* 59). And in a similar action, the plaintiff, having received the taxed costs of his replevin on the distress, was held not entitled to recover, as damages, the extra costs occasioned to him by the replevin. (*Grace* v. *Morgan*, 2 *Bing. N. C.* 534; 2 *Scott*, 790, S. C.)

In case for selling goods distrained for rent without an appraisement, the measure of damages is the value of the goods minus the rent. (*Biggins* v. *Goode*, 2 *C. & J.* 364; *Notts* v. *Curtis*, *id.* n.)

Tender of amends.

The tender of amends need not be pleaded specially, nor the amount of the tender paid into court, but it may be given in evidence under the general issue by statute. (*Jones* v. *Gooday*, 1 *Dowl.* (*N. S.*), 914; *Lawrence* v. *Hill*, 6 *Bac. Ab.* tit. "*Tender*," 6).

General issue.

The plea of "not guilty by statute," pleaded under stat. 11 Geo. II. c. 19, s. 21, in an action for an excessive distress, puts in issue not only the matter of justification, but the tenancy and ownership of the goods. (*Williams* v. *Jones*, 11 *Ad. & Ell.* 643).

Costs.

By the 3 & 4 Vict. c. 24, a judge's certificate is necessary to give a plaintiff costs in actions of case and trespass wherein he recovers less than forty shillings damages. This salutary provision has the effect of stopping many frivolous actions for trifling irregularities in distresses.

The provision at the end of the 21st sect. of the 11 Geo. 2, c. 19, giving

13. *Rent where an Extent or Execution.*

the defendant double costs if plaintiff becomes nonsuit or discontinues his action, is repealed by the 5 & 6 Vict. c. 97; and by that act, sect. 2, the defendant will in such case be entitled to receive only a full indemnity as to his costs of the defence.

XIII. Rent in case of an Extent, or Execution, or Bankruptcy, &c.

Rent in case of extent.

Rent in case of Extent.]—In *R.* v. *Cotton*, T. 1755, it was determined by the barons of the exchequer, and affirmed on a writ of error, that if a distress be made for rent, and before the five days given by act of Parliament have expired, an extent is issued, though it be not levied, for a debt due to the crown, the extent shall take place of the distress, because the distrainer neither gains a general nor a special property, nor even the possession of the cattle or things distrained. The distress is only a pledge in his hands for the rent. But the extent binds the property of the goods of the king's debtor from the teste of it. (*Park*, 112; *and see R.* v. *Hodder*, 4 *Price*, 313). The landlord of the premises on which goods have been seized under an extent in aid is not entitled under the act of 8 Anne, c. 14, to call on the sheriff to pay twelve months' rent due before the teste of the writ. (*R.* v. *Decaux*, 2 *Price*, 17).

Rent in case of execution.

Arrears of rent to be first paid not exceeding one year's rent.

Rent in case of an Execution.]—By stat. 8 Ann. c. 14, s. 1, no goods being on any messuage, lands or tenements, leased for life, term of years, at will, or otherwise, shall be liable to be taken by execution, unless the party, at whose suit the execution is sued out, shall, before the removal of such goods from off the premises, pay to the landlord or his bailiff all such rent as shall be then due for the premises, provided that it amount not to more than one year's rent; and if the said arrears shall exceed one year's rent, then the party paying such landlord one year's rent may proceed to execute his judgment. This act is extended to process in Durham and Sadbirge by 11 Geo. IV. & 1 Will. IV. c. 11.

According to this statute the sheriff is not bound to take the goods in execution unless the plaintiff in the action, before the removal of such goods, pays the landlord the rent due to the extent of one year's arrears at the time of the levy. (*Calvert* v. *Joliffe*, 2 *B. & Adol.* 418; *and see Wray* v. *Earl of Egremont*, 1 *N. & M.* 190; 4 *B. & Adol.* 122, S. C.)

Liability of sheriff.

If the sheriff does not comply with this act, he will be liable to an action at suit of the landlord. (*Palgrave* v. *Windham*, 1 *Stra.* 212; *Green* v. *Austin*, 3 *Camp.* 260; *Duck* v. *Braddyll*, *M'Clel.* 217; 13 *Price*, 455, S. C.; *Rothery* v. *Wood*, 3 *Camp.* 24, on motion to the court). But he will not be so liable, unless there be a demand for the rent before the removal by the party entitled to it. The sheriff is liable to the landlord for a year's rent, though the goods seized on the premises and sold were not the property of the execution debtor, and though the sheriff afterwards accounted for the proceeds with the real owner: for goods found on the premises are liable to be distrained, whether they are the property of the tenant or a stranger. (*Forster* v. *Cookson*, 1 *Ad. & Ell.* (*N. S.*) 419).

The sheriff is not bound to find out what rent is due to the landlord and pay it him, but the landlord must give him notice. (*Smith* v. *Taunton*, 3 *Taunt.* 400; *Arnitt* v. *Garnett*, 3 *B. & Ald.* 440). No particular form of notice is requisite. (*Andrews* v. *Dixon*, 3 *B. & Ald.* 645; *Colyer* v. *Speer*, 4 *Moore*, 473; 2 *Brod. & B.* 67, S. C.)

In *Arnitt* v. *Garnett* (3 *B. & Ald.* 440), the court, on motion, ordered a year's rent out of the proceeds, while in the sheriff's hands, to be paid

to the landlord, though the sheriff had no notice of the rent being due till after the removal. But an action for money had and received could not be sustained against him. (*Green* v. *Austen*, 3 *Camp.* 260).

13. *Rent in case of Execution.*

A demand on the sheriff by a person to whom administration is afterwards granted will not operate by relation. (*Waring* v. *Dewberry*, 1 *Stra.* 79; *Smith* v. *Russell*, 3 *Taunt.* 400).

The sheriff must satisfy the landlord in the first instance, (*Colyer* v. *Speer*, 4 *Moore*, 473); and before the removal of any part of the goods. (*Id.*; 2 *B. & B.* 67; S. C. *Calvert* v. *Joliffe*, 2 *B. & Adol.* 418). A bill of sale is a removal. (*West* v. *Hedges*, *Barnes*, 211). No deduction for poundage can be made from the rent. (*Gore* v. *Gofton*, *Stra.* 643).

When landlord entitled.

There must be a *subsisting tenancy* to entitle the landlord to the rent. (*Hodgson* v. *Gascoigne*, 5 *B. & Ald.* 88). In an agreement for assigning a lease for a sum of money, to be paid on or before a distant day, the lessee agreed to make some alterations on the premises, which his assignee was to occupy, paying until the completion of the assignment "at the rate of £100 per year, in half-yearly payments." The lessee afterwards agreed to allow £12 for some of the alterations he ought to have made, the rest were never completed, and the assignee paid in advance £10. It was held that the sheriff, levying on the goods of the assignee under a *fi. fa.*, was bound to pay over to lessee half a year's rent due, and that the £12 and £10 were in part payment of rent, as they were intended to be allowed out of the *first* payment due by the assignee to the lessee. (*Saunders* v. *Musgrave*, 6 *B. & Cres.* 524; 2 *C. & P.* 294, S. C.)

The landlord, to be entitled to the rent, must also be the immediate one, and not the ground landlord. (*Bennet's case*; 2 *Stra.* 787).

An executor or administrator is entitled to arrears accrued in the testator's lifetime, (*Palgrave* v. *Windham*, 1 *Stra.* 212); and so is a trustee of an outstanding satisfied term in trust for mortgagees. (*Colyer* v. *Speer*, 4 *Moore*, 473; 2 *B. & B.* 67, S. C.)

The statute extends to an execution at the suit of the defendant for costs. (*Henchett* v. *Kimpson*, 2 *Wils.* 140). But a commission of bankruptcy is not an execution within the statute. (*Lee* v. *Lopes*, 15 *East*, 230). Goods taken on a *capias utlagatum* are within it. (*Bunb.* 5, 194, 269; 7 *T. R.* 284). So are goods taken on a *pone per vadios*, issuing out of the court of pleas of Durham; in which case the goods are forfeited to the bishop, who afterwards assigns them over to the party. (*Brandling* v. *Barrington*, 6 *B. & Cres.* 467).

In the case of two executions, there shall not be two years' rent paid to the landlord; for the intent of the act was to reserve to the landlord only the rent for one year, and it was his own fault if he let more run in arrear. Therefore one year's rent to the landlord being paid to him on the first execution, the sheriff is not to levy for him again any thing on a subsequent execution. (*Dod* v. *Saxby*, 2 *Stra.* 1024; *Peacock* v. *Purvis*, 2 *B. & B.* 362, 366; 5 *Moore*, 79, S. C.; *Wright* v. *Dewes*, 3 *N. & M.* 790; 1 *Ad. & Ell.* 641, S. C.); unless perhaps the goods be not removed in a reasonable time. (*Guilliam* v. *Barker*, 1 *Price*, 277; *Blades* v. *Arundale*, 1 *M. & Sel.* 711).

The landlord's claim under the statute may be supported for forehand rent. (*Harrison* v. *Barry*, 7 *Price*, 690). So for rent that falls due on the day of the levy. (*Tidd*, 8 ed. 1054). But rent arising after the seizure under the execution is not within the act, and cannot be deducted. (*Hoskins* v. *Knight*, 1 *M. & Sel.* 245). A sheriff taking corn in the blade under a *fi. fa.*, and selling it before rent due, is not liable to account to the landlord of the defendant under this act of Anne, for rent accruing subsequently to the levy and sale, although he has given notice, and though the corn be not removed from the premises until long afterwards, when a considerable portion of rent has become due; the landlord's remedy in such case is by distress. (*Guilliam* v. *Barker*, 1 *Price*, 274).

14. *Rent how recoverable by Executors, &c.*

Bankruptcy and insolvency.

Distresses in case of Bankruptcy and Insolvency.]—The landlord may distrain *before* an act of bankruptcy by his tenant for the whole amount due. *After* an act of bankruptcy also he may distrain, even although the messenger be actually in possession of the goods on the premises. (*Exp. Plummer*, 1 *Atk.* 103; *Buckley* v. *Taylor*, 2 *T. R.* 600; *Briggs* v. *Sowry*, 8 *M. & W.* 724). And formerly he might have distrained for the whole rent due, but now by the 6 Geo. IV. c. 16, s. 74, the distress shall not be available for more than one year's rent, and the landlord must prove under the commission for the residue.

This enactment applies only to rent accrued due before the bankruptcy. (*Briggs* v. *Sowry*, 8 *M. & W.* 729).

Though in the case of the tenant's becoming bankrupt a landlord may distrain for his rent upon the bankrupt's goods, either before or after the assignment under the commission, yet if he neglect to do so, and suffer the goods to be sold by the assignees, he can only come in for his rent *pro ratâ* with the other creditors. (*Anon.*, 1 *Atk.* 102; and *Ex parte Descharmes, ib.* 103).

So in the case of *Ex parte Devismos*, Jan. 1776, where the question was, whether the landlord was entitled to have a year's rent paid to him out of the effects of a bankrupt (his tenant), such effects having been seized under the commission, and removed by the messenger from the demised premises in respect of which the rent was in arrear, Lord Chancellor *Bathurst* was clearly of opinion, upon the authority of the two cases from 1 *Atk.* (*suprà*), that the landlord could only come in as a common creditor. And he added, that if the legislature had intended to prefer the landlord, they would have done so under the statute of Anne, as they did in the insolvent debtors act. (MS. *Vide Cooke's B. L.* 191, 6th edit.)

In *Bradyll* v. *Ball*, (1 *Bro.* 427), it was decided that the landlord has no lien upon the goods after they are removed from the premises.

In order to enforce a landlord's claim for rent in arrear, against assignees after a seizure under a fi. fa., he must distrain. (*Gethin* v. *Wilks*, 2 *Dowl. P. C.* 189).

The effect of the 75th section of 6 Geo. IV. c. 16 is it seems only to exempt the bankrupt from personal liability, and does not affect the landlord's right of distress, (*Briggs* v. *Sowry*, 8 *M. & W.* 729); and where a landlord distrained the goods of A. on his tenant's premises, for rent, and the tenant afterwards became bankrupt and obtained his certificate, it was held that the certificate did not operate as a release of the rent, and therefore that the landlord had a right in replevin at the suit of A., to avow for the return of the goods. (*Newton* v. *Scott*, 9 *M. & W.* 434).

The 58th section of the Insolvent Act, 1 & 2 Vict. c. 110, contains a similar provision to sect. 74 in the Bankrupt Act. In the construction of a similar provision contained in the prior Insolvent Act, 7 Geo. IV. c. 37, s. 31, it has been held, that a distress taken before, but not sold till after the arrest of the insolvent debtor, is available for more than a year's rent. (*Wray* v. *Earl of Egremont*, 4 *B. & Adol.* 122).

XIV. Rent how far Recoverable by Executors or Administrators.

Rent recoverable by executors or administrators 32 Hen. 8, c. 37.

By the 32 Hen. VIII. c. 37, s. 1, forasmuch as by the order of the common law the executors or administrators of tenants in fee simple, fee tail, and for term of life, of rent services, rent charges, rent secks, and fee farms, have no remedy to recover such arrearages of the said rents or fee farms as were due to their testators in their lives, nor yet the heirs of such testator, nor any person having the reversion of his estate after his decease, may distrain or have action to levy the same, it is enacted,

that the executors and administrators of every such person to whom any such rent or fee farm shall be due and not paid at the time of his death, may have an action of debt for the same against the tenant who ought to have paid the same, or against his executors or administrators; or may *distrain* upon the premises, so long as they continue in the possession of such tenant in demesne, who ought immediately to have paid the same to the testator in his life, or of any other person claiming the same only by and from such tenant by purchase, gift, or descent.

14. *Rent how recoverable by Executors, &c.*

By action. Or distress.

In like manner the husband may have action, or distrain for arrears due in the life-time and in the right of his wife. Sect. 3.

And if any person shall have any rents or fee farms for the life of any other person, which shall be behind and unpaid at the death of such other person, he, his executors or administrators, may have action of debt against the tenant in demesne that ought to have paid the same when it was first due, his executors or administrators, or may distrain for the same upon the premises in such like manner as he might have done if the person by whose death the estate was determined had been in full life. Sect. 4.

The recital of the above act is explained in *Co. Litt.* 162. a., b. Lord *Coke* there recommends the remedy by distress as most plain and certain.

Remedy by distress recommended.

Fee farm is, when the lord, upon the creation of the tenancy, reserves to himself and his heirs either the rent for which it was before let to farm, or at least a fourth part of the value, without homage, fealty, or other services, beyond what are especially comprised in the feoffment; and it is called a fee farm rent, because a farm rent is reserved upon a grant in fee. (2 *Inst.* 44).

Fee farm, what is.

The act does not extend to copyhold rents; (*Appleton* v. *Doily*, *Yelv.* 135), nor to a creditor by *elegit* of tenant for life of a rent charge; (*B. N. B.* 56); nor to the executors of a grantee of a rent charge for years, if he so long live; (*Id.*); nor does it apply to the executor of a person who was seised in fee of lands, and demised it for a term of years reserving a rent, so as to enable him to distrain for arrears of rent accrued in the testator's life-time, for the latter was not a tenant in fee simple of a rent within the meaning of the stat. 32 Hen. VIII. c. 37, s. 1. (*Prescott* v. *Boucher*, 3 *B. & Ad.* 849; *Jones* v. *Jones*, *id.* 967; and see the cases and law in 1 *Williams on Executors*, 602, &c.)

Creditor by elegit. Executor of grantee of rent charge.

Distress by executor of freeholder.

But it is a remedial law, and extends to *all* tenants for life, (*Co. Litt.* 162. a., b.), and if a tenant for *years* underlet for years and die, it is clear that his executor may distrain for arrearages at common law; for such arrears were never separated from the reversion, and both belong to the executor. (*Latch.* 211).

Act remedial. Extends to all tenants for life.

Executors of tenant for years.

And now by stat. 3 & 4 Will. IV. c. 42, ss. 37, 38, the executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will for the arrearages due to such lessor or landlord in his life-time in like manner as such lessor or landlord might have done in his life-time. And such arrearages may be distrained for after the determination of such term or lease at will, in the same manner as if such term or lease had not been ended or determined; provided such distress be made within the space of six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears become due, and all powers and provisions in the several statutes made relating to distresses for rent, are made applicable to the distresses so made as aforesaid

A distress for rent arrear was made by the command and in the name of the landlord, but he died before it was effected. Held, that his executrix might ratify the distress before she had obtained probate of the will, and the bailiff might make cognizance as her bailiff. (*Whitehead* v. *Taylor*, 10 *Ad.* & *Ell.* 210).

15. *Of Rescous and Pound Breach.*

Where a landlord is entitled to a term of years, and dies without appointing an executor, a distress for rent made after his death, and before any grant of administration, cannot be justified. (*Keane* v. *Dee*, 1 *Alcock & Napier*, 496, n.)

XV. Of Rescous and Pound Breach.

Rescous and pound breach.

By the common law, if a man break the pound or the lock of it, or part of it, he greatly offendeth against the peace, and doth trespass to the king, and to the lord of the fee, and to the sheriff, and hundredors, in breach of the peace, and to the party, and to the delaying of justice; and therefore hue and cry is to be levied against him, as against those who break the peace. (*Mir.* c. 2, s. 26).

Reception.

And the party who distrained may take the goods again, wheresoever he shall find them, and impound them again. (1 *Inst.* 47.)

Breaking open doors in pursuit

But it seems he cannot break open the house, or enter the grounds of a third person for that purpose, at any rate unless on fresh pursuit, (*see Francombe* v. *Pinche*, *Esp. N. P.* 396, 6th edit.; *Rich* v. *Woolley*, 7 *Bing.* 651; *Russell* v. *Rider*, 6 *C. & P.* 416); and he must not be guilty of any breach of the peace in such reception.

Actual force not necessary to constitute offence of pound breach.

It seems that actual force is not necessary to constitute the offence of pound-breach. Thus where an attorney, assuming upon himself an authority to grant a replevin, when he had none, granted a replevin in his own cause, he was considered guilty of a pound-breach. (*Trevannion's case*, 11 *Mod.* 32).

What is a rescous.

Where a man hath taken distress (as to what is such taking see *ante*, 290), and the cattle distrained, as he is driving them to the pound, go into the owner's house, if he that took the distress demand them of the owner and he deliver them not, this is a rescous in law. (1 *Inst.* 161; 6 *Bac. Abr.* tit. "*Rescue*," (A).)

There can, however, be no rescous but where the party has had the actual possession of the cattle or other things whereof the rescous is supposed to be made; for if a man come to arrest another or to distrain, and be disturbed regularly, his remedy is by action on the case. (1 *Inst.* 161; 6 *Bac. Abr.* 87; and the authorities there cited).

If a hayward take cattle which are straying in a common or lane, and they are rescued as he is taking them to the pound, this rescue is indictable; but if the hayward take cattle which are damage feasant in the inclosed land of any private occupier, the rescue of them before they get to the pound is not indictable; as in the latter case, till the cattle get to the pound, the hayward is to be considered the mere servant of the occupier. (*Rex* v. *Bradshaw*, 7 *Car. & P.* 233).

When justified.

If a distress be taken without cause, before it is impounded the party may make a rescous, but if it be impounded he cannot justify the breach of the pound to take it out of the pound, because the distress is then in the custody of the law; if, however, the pound be unlocked, it seems he may take it. (See *B. N. P.* 61).

An indictable offence.

The forcibly rescuing goods distrained, and the rescuing cattle by the breach of the pound in which they have been placed, have been considered as offences at common law, and indictable as such, (1 *Russ.* 363); and it would seem that the indictment will lie though there was no actual breach of the peace; for though a mere trespass, without circumstances of violence, is not indictable, yet a pound breach, or rescue, is an injury and insult to public justice. (2 *Chit. C. L.* 204, note (B); 1 *Russ.* 363).

Civil remedy.

The old common-law remedy for the party injured was a writ of rescous, but the civil remedy given by stat. 2 Will. & Mary, sess. 1, c. 5, s. 4, will, in most cases of a pound breach, or a rescue of goods distrained for rent, be found the most desirable mode of proceeding where the offenders are responsible persons. That statute enacts, that upon

pound-breach or rescous of goods distrained for rent, the person grieved shall, in a special action on the case, recover treble damages and costs against the offenders or against the owners of the goods if they come to his use. (See 1 *Russ.* 411; *Bradby on Distresses*, 282. *Bac. Ab. Rescue* (C.)) In case for rescous of goods, distrained for toll, under the authority of a statute, which gives a right to distrain particular goods only, the declaration must state, that the goods taken were such as the plaintiffs were empowered to distrain. But a declaration for pound-breach of such goods is sufficient, though it discloses no right of distress. (*Parrett Navigation Company* v. *Stower*, 6 *M. & W.* 564, and see *Castleman* v. *Hicks*, 1 *Car. & M.* 266). In *Firth* v. *Purvis* (5 *T. R.* 432), it was held to be no answer to an action on this enactment, that the rent in demand was tendered after the distress and impounding. The enactment was construed to entitle the person grieved to treble costs as well as damages, (*Lawson* v. *Storey*, 1 *Ld. Raym.* 20; *Deacon* v. *Morris*, 2 *B. & Ald.* 393); but the 5 & 6 Vict. c. 97, s. 3, repeals all enactments giving double and treble costs. (See that enactment, tit. "*Justices*," *Vol. III.* p. 1043).

15. *Of Rescue and Pound Breach.*

Summary remedy before justices.

By the 6 & 7 Vict. c. 30, intituled, "*An Act to amend the Law relating to Pound-breach and Rescue in certain Cases*," reciting that, "It frequently happens that cattle which are lawfully impounded, or which are lawfully seized for the purpose of being impounded, are rescued from the pound or place in which they are so impounded, or on the way to or from such pound or place, and the expense of prosecuting such offenders, or obtaining redress for the injury occasioned by such rescue to the persons so entitled to distrain, is usually out of proportion to the damage for which such cattle are distrained; and whereas it is expedient for remedy thereof, to enable two or more of her Majesty's justices of the peace to try such offenders in a summary way, and award such redress as hereinafter mentioned to the persons on whose behalf the cattle so rescued shall have been distrained;" it is enacted, "That in case any person or persons shall release or attempt to release any horse, ass, sheep, swine, or other beast or cattle, which shall be lawfully seized for the purpose of being impounded, in consequence of having been found wandering, straying, or lying or being depastured on any inclosed land without the consent of the owner or occupier of such inclosed land, from the pound or place where the same shall be so impounded, or on the way to or from any such pound or place, or shall pull down, damage, or destroy the same pound or place, or any part thereof, or any lock or bolt belonging thereto, or with which the same shall be fastened, every person so offending shall, upon conviction thereof before any two of her Majesty's justices of the peace, forfeit and pay any sum not exceeding 5*l.*, together with reasonable charges and expenses, or in default thereof be committed by such justices, by warrant under their hands and seals, to the house of correction of the county wherein the said offence shall have been committed, there to be kept to hard labour for any time not exceeding three calendar months nor less than fourteen days, unless such sum of money and costs as aforesaid shall be sooner paid; and it shall be lawful for the said justices to award the whole or any portion of such penalty to the person or persons on whose behalf such cattle were distrained."

Persons releasing or attempting to release cattle impounded, or damaging any pound, &c., upon conviction before two justices, to forfeit 5*l.* and expenses, and in default of payment to be imprisoned.

Justices not to hear cases where questions of title arise, or as to any bankruptcy, &c.

Sect. 2 provides and enacts, "That nothing herein contained shall authorize any justices of the peace to hear and determine any case of pound-breach or rescue in which any question shall arise as to the title to any lands, tenements, or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice, or as to the obligation of maintaining, repairing, or keeping in repair any wall, hedge, paling, ditch, sunk fence, or fence whatsoever."

Summonses may be issued against offenders, who, on proof on oath of

Sect. 3. "That it shall and may be lawful to and for any justice of the peace, upon information or complaint being made upon oath before him by any person of any offence against the provisions of this act, to

16. *Tenant holding over.*

one or more witnesses before two justices, shall be convicted in penalty and costs.

summon the party accused to appear before any two justices of the peace within whose jurisdiction the offence shall have been committed, at a time and place to be named in such summons, and upon the appearance of such party, or in his absence in case he shall not appear according to the tenor of such summons, any such justices before whom such party shall have been so summoned to appear shall and may (upon proof of the service of such summons) proceed to examine into the matter, and upon due proof made of such having been committed, either by confession of the party accused, or upon the oath of one or more credible witness or witnesses, to give judgment or convict for the penalty and costs (as the case may be)."

Offenders may be apprehended by a warrant of justices.

Sect. 4. "That every such justice of the peace may, without issuing any summons, forthwith issue his warrant to any constable for the apprehension of any person charged under this act, whenever good grounds for so doing to his satisfaction shall be stated on oath before him."

Highways.

The 5 & 6 Will. IV. c. 50, s. 75, (tit. "*Highways*," *Vol. III.* p. 585), imposes a penalty on persons breaking the pound to rescue cattle and animals found trespassing on highways.

As to the punishment &c. of persons guilty of a pound-breach on a distress made under a Turnpike Act, see 3 Geo. IV. c. 126, s. 123; "*Highways*," "*Turnpike*," *Vol. III.* p. 749.

XVI. Tenant holding over.

Distress when allowed where tenants hold over after the term is expired.

We have already seen that there can be no distress where there is no tenancy, and consequently none after the termination of a prior tenancy, (*ante*, 273).

But by stat. 8 Ann. c. 14, s. 6, reciting that tenants *pur autre vie*, (that is, holding during the life of another person), and lessees for years, or at will, frequently hold over after the determination of the lease; and that, after the determination of such or any other leases, no distress can be made for arrears of rent that grew due on such leases before the determination thereof; it is enacted, "That it shall be lawful to distrain after the determination of such lease, in the same manner as if it had not been determined."

Sect. 7. Provided, "That such distress be made within the space of six calendar months after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due."

To enable a landlord to distrain under this act it is requisite that his title should continue, and that the tenant should still remain in possession of the land demised, and that the distress should be made within six months after the tenancy has expired. The possession of the tenant must be an actual possession; for where the tenant, a few days after his lease expired, gave up possession to the incoming tenant, but, without the latter's permission, left some cattle in the fold-yard, which were afterwards distrained in the name of the landlord, it was held, that the tenant was not possessed of the premises, and that the grazing of the cattle thereon did not constitute a possession under 8 Ann. c. 14, ss. 6, 7, and that the distress was consequently illegal. (*Taylerson* v. *Peters*, 7 *Ad. & El.* 110).

But a distress may be made after the expiration of six months, during the time that the tenant, according to the custom of the county, has the away-going crops on the premises. (*Beaven* v. *Delahay*, 1 *H. Black.* 5). So, where by agreement as well as custom of the county a tenant was to have the use of the barns and gate-rooms to thresh out his corn and fodder his cattle till the May-day after the expiration of his term; his term expired at Michaelmas, 1824: he was then restrained by injunction, at the instance of his landlord, from carrying off the premises corn in the straw: and in January, 1825, his landlord distrained a rick of corn on the premises; it was held the distress was valid. (*Knight* v. *Bennett*, 3 *Bing.* 364).

The act is not confined to a tortious holding over, or to a holding over of the whole, and, therefore, a landlord, who permits his tenant to retain possession of *part* of a farm after the tenancy has expired, may distrain under this act *on that part* within six months after the expiration of the tenancy. (*Nuttall* v. *Staunton*, 6 *D. & R.* 155; 4 *B. & Cress.* 51, S. C.) But the act does not apply to cases where the tenancy is put an end to by the tenant's wrongful disclaimer. (*Doe* v. *Williams*, 7 *C. & P.* 322). 16. *Tenant holding over.*

A termor, who lets to an under-tenant, cannot, after his term expired, enforce the continuance of the under-tenancy by distress, if the under-tenant refuse to acknowledge him as landlord, or to pay him under threat of distress, although the under-tenant still retains the possession. (*Burne* v. *Richardson*, 4 *Taunt.* 720).

By the 11 Geo. II. c. 19, s. 18, if any *tenant* shall give notice of his intention to quit the premises holden by him at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained, then such tenant, his executors or administrators, shall thenceforward pay to the landlord *double the rent* or sum which he should otherwise have paid, to be levied, sued for, and recovered at the times and in the same manner as the single rent or sum, before the giving of such notice, could be levied, &c.; and such double rent or sum shall continue to be paid during the time such tenant shall continue in possession. Double rent.

For this double rent the landlord may distrain. (*Timmins* v. *Rawlinson*, 3 *Burr.* 1603; *Jenner* v. *Clegg*, 1 *Mood. & R.* 213). The statute applies whether the tenant hold under a lease or a parol demise, or whether the tenant's notice be in writing or by parol. (*Timmins* v. *Rawlinson*, *ubi sup.*) Those cases only are within the statute where the tenant has the power of determining the tenancy by notice, and where a *valid* notice is given, or the bad notice has been assented to by the landlord in writing. (*Johnson* v. *Huddlestone*, 4 *B. & C.* 922). The notice mentioned in this statute need not be in *writing;* (*Timmins* v. *Rawlinson*, 3 *Burr.* 1603); but it must give a fixed time for quitting: thus a notice to quit "as soon as the tenant can get another situation" does not render him liable on this statute, though he has got another situation. (*Farrance* v. *Elkington*, 2 *Camp.* 591). A tenant who holds over for a year, after notice to quit, paying double rent, according to the above act, may quit at the end of the year without fresh notice. (*Booth* v. *Macfarlane*, 1 *B. & Adol.* 904).

If a landlord accept single rent after the tenant has given notice, he waives his claim to double rent. (*Doe* v. *Batten*, 1 *Cowp.* 243).

By the 4 Geo. II. c. 28, s. 1, in case any tenant or tenants for life, lives, or years, or other persons who shall come into possession of any lands, tenements, or hereditaments, by, from, or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, &c. after the determination of their term, and after demand made and notice in writing given for delivering the possession thereof, by his or their landlord or lessor, or the person or persons to whom the remainder or the reversion of such lands, &c. shall belong, his or their agents thereunto lawfully authorized, such persons so holding over shall, for and during the time he or they shall so hold over, or keep the person or persons entitled out of the possession of the said lands, &c., pay to the person or persons so kept out of possession, their executors, administrators, or assigns, at the rate of double the yearly value of the said lands, &c. for so long time as the same are detained. Double value.

The landlord cannot distrain for double value. His remedy for it is by action.

Where the tenancy is put an end to by a notice to quit, the notice to entitle the landlord to double value must, it will be seen by the act, be in writing. A notice containing a threat of requiring double rent on refusal is sufficient. (See *Poole* v. *Warren*, 8 *A. & Ell.* 582, 585).

No further demand of possession is necessary than the notice to quit, where the tenancy has been put an end to by such notice. (*Wilkinson*

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v. *Colley*, 5 *Burr.* 2694). But where the tenant has held over after the determination of a term certain, a demand of the possession must be proved; but it need not appear that the demand was made on or before the expiration of the tenancy, (*Cobb* v. *Stokes*, 8 *East*, 361), though the plaintiff will only be entitled to the double value from the time of the demand made. And where the rent is reserved quarterly, and the demand is made in the middle of a quarter, the plaintiff cannot recover the single rent for the antecedent fraction of the quarter. (*Ib.*) Where the notice was served upon the tenant, a feme sole, who married before the expiration of the year, it was held, that the landlord might maintain debt against the husband, without making a demand of the possession from him; and that in such action it was not necessary to join the wife for conformity. (*Lake* v. *Smith*, 1 *New Rep.* 174). A person appointed by the Court of Chancery to receive the rents and profits of the estate is a sufficient agent within the statute to make the demand in his own name. (*Wilkinson* v. *Colley*, 5 *Burr.* 2694). Where a trustee joined with the cestui que trust in a mortgage to the plaintiff, and all parties joined in appointing G. to be the agent and attorney of the cestui que trust, to demand and collect rent, to give notices to quit, &c., and to do every thing that the cestui que trust could have done before the mortgage, it was held that G. was authorized to demand within the statute. (*Poole* v. *Warren*, *supra*).

Where the claim for double value is against co-tenants, a statement by one, on receipt of notice to quit, that "he has nothing to do with the land," is not evidence in his favour to shew that his holding was not wilful; but if one offers to give up the land, and the other alone holds out, it is doubtful whether the action will lie against both. (*Hirst* v. *Horn*, 6 *M. & W.* 393).

The value must be estimated according to the time the tenant actually held over the premises. He will not, it would seem, be liable for any rent after the day he quitted possession, though he quitted in the middle of a quarter. (See *Booth* v. *Macfarlane*, 1 *B. & Ad.* 904, *per Tenterden*, C. J.) Where the owner of a mill let part of it to the defendant, with the use of the revolving shaft of a steam-engine which passed through the part demised, at an entire rent, the value of the power must be excluded in estimating the amount of the double value. (*Robinson* v. *Learoyd*, 7 *M. & W.* 48).

The landlord may waive the notice to quit and demand of possession, and thereby lose his claim to double rent; and, where he has accepted rent from the tenant after the expiration of the notice to quit, it is a question for the jury whether such rent was received in part satisfaction of the double value, or as a waiver of it. (*Ryall* v. *Rich*, 10 *East*, 52). A recovery in ejectment is no waiver of the landlord's right to the double value for the time between the expiration of the notice to quit and the time of recovering possession under the ejectment. (*Soulsby* v. *Neving*, 9 *East*, 310). A tenant, who holds over under a fair claim of right, will not be considered as wilfully holding over within the statute, though it appear eventually that he had no right. (*Wright* v. *Smith*, 5 *Esp.* 203).

XVII. Forms.

Warrant of Distress (No 1).

Inventory of Goods (No. 2).

Notice of Distress (No. 3).

Appraiser's Oath (No. 4).

Form of the Appraisement (No. 5).

Consent for Distrainor to continue in Possession (No. 6).

Complaint on Stat. 11 Geo. II. c. 19, s. 4, before a Justice where Goods clandestinely removed, in order to commit the Offenders (No 7).

Warrant thereon to summon the Parties concerned (No. 8).

Order of Justices thereon (No. 9).

Warrant of Distress in case the Offenders having Notice neglect or refuse to pay pursuant to the preceding Order (No. 10).

Constable's Return thereon of Want of Distress (No. 11).

Commitment thereon to House of Correction (No. 12).

Recognizance on Appeal against a Conviction by two Justices for fraudulently assisting to convey Goods off the Premises to avoid a Distress (No. 13).

Complaint on 11 Geo. II. c. 19, s. 3, before a Justice where Goods being fraudulently removed and secured in a Dwelling-house, to prevent them from being taken as a Distress for Rent (No. 14).

Warrant thereon to follow and search for Goods fraudulently removed to prevent a Distress (No. 15).

Information for a Rescous and Pound Breach at Common Law (No. 16).

Order and Judgment for taking too much Costs where the Order and Judgment is for the Complainant (No. 17).

The like, where Justice dismisses the Complaint as unfounded, and with or without costs (No. 18).

(1.) Warrant of distress (a).

I DO hereby authorize you, A. B. of in the county of to distrain the cattle, goods, and chattels of A. T. of in the said county, in the premises [or as the case may be] *which he holds of me, situate in the parish aforesaid, in the county aforesaid, for arrear of rent due to me for the said premises at last past; and for your so doing this shall be a sufficient warrant. Witness my hand the day of .*

(2.) Inventory of goods.

AN inventory of the several cattle, goods, and chattels distrained by us whose names are underwritten, the day of in the year in the premises of A. T. in by the authority and on the behalf of A. L. of for pounds arrear of rent due to him the said A. L.

In the dwelling-house:
One table,
Six chairs, &c.
In the cow-house:
Six cows,
Two calves, &c. [and so on as the case may be].

(3.) Notice (b).

A. T.

TAKE notice, that by the authority and on the behalf of your landlord, A. L., I have this day of in the year of our Lord distrained the several [*cattle,*] *goods, and chattels specified in the schedule hereunto annexed in your premises at for pounds arrear of rent due to him the said A. L.; and if you shall not pay the said rent so due and in arrear as aforesaid, or replevy the said* [*cattle,*] *goods, and chattels, I shall, after the expiration of five days from the date hereof, cause the said* [*cattle,*] *goods, and chattels to be appraised and sold according to the statute in that case made and provided. Given under my hand the day and year first above written.*

A. D.

Witness that a copy hereof was this day delivered to the said A. T. [or *left at the chief mansion-house of the said A. T.*] *A. W.* (c)

(4.) Appraisers' oath (c).

YOU and each of you shall well and truly appraise the goods and chattels mentioned in this inventory, according to the best of your understanding: So help you God.

(a) See *ante*, 275.

(b) If the landlord himself distrain, the forms may be readily altered.

(c) *Ante*, 297.

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(5.) Form of the appraisement (a).

The appraisement may be in the form of the inventory, specifying the particulars and their respective valuation . and then add at the end, *Appraised by us this day of in the year*

A. P.
B. P. } *Sworn Appraisers.*

(6.) Consent for distrainer to continue in possession (*ante*, 296).

But if the tenant request the landlord to give further time for selling the goods distrained, and the landlord consent, it is best for the tenant to sign a memorandum thereof to the following effect :—

I A. T. do hereby request that A. L. my landlord, who, on the . day of last, distrained my [cattle,] goods, and chattels on my premises at in the county of will forbear the sale thereof until the day of next, in order to enable me to discharge my said rent; and I do consent that the said [cattle,] goods, and chattels so distrained may remain at my proper cost and in his possession upon the premises where they now are until that time, and I undertake not to replevy the said [cattle], goods, and chattels. In witness whereof I have hereunto set my hand the day of .

Witness, A. W. *A. T.*

(7.) Complaint on stat. 11 Geo. 2, c. 19, s. 4, before a justice, where goods clandestinely removed, in order to summon the offenders (*ante*, 283).

—— } *BE it remembered, that this day of A. B. of complaineth that A. T. of [yeoman] hath fraudulently and clandestinely removed and conveyed away certain goods and chattels of the said A. T. not exceeding the value of 50l. from certain premises at to prevent the said A. B. from distraining the said goods and chattels for arrears of rent due to the said A. B. from the said A. T. for the said premises. And that A. O. of [yeoman], and B. O. of [labourer], wilfully and knowingly aided and assisted the said A. T. in so fraudulently and clandestinely removing and conveying away the said goods and chattels and in concealing the same; contrary to the form of the statute in such case made and provided.* *A. B.*

Exhibited at the day of before me Esquire, a justice of the peace of residing near the place whence the said goods and chattels were removed, and not being interested in the said premises whence such goods and chattels were removed (a).

—— } *To the constable of and others whom this may concern.*

(8.) Warrant thereon to summon the parties concerned.

WHEREAS a complaint in writing hath been this day of exhibited before me J. P. Esquire, a justice of the peace for the said county (residing near the place whence the goods and chattels hereafter mentioned were removed [or, "*near the place whence the goods and chattels hereafter mentioned were found*"], *not being interested in the premises whence the same were removed) by A. B. of gentleman, setting forth that A. T. of yeoman, hath fraudulently and clandestinely removed and conveyed away certain goods and chattels of the said A. T. not exceeding the value of 50l. from the premises at, &c. to prevent the said A. B. from distraining tha said goods and chattels for arrears of rent due to the said A. B. from the said A. T. for the said premises. And that A. O. of [yeoman], and B. O. of [labourer], wilfully and knowingly aided and assisted the said A. T. in so fraudulently and clandestinely removing and conveying away the said goods and chattels, and in concealing the same; against the form of the statute in such case made and provided. These are therefore to command you forthwith to summon the said A. T., A. O., and B. O., to appear before two or more justices of the peace at on the day of at the hour of to answer the matter of the said complaint. Given under my hand and seal at the day of .*

J. P. (L. S.)

(9.) Order of justices thereon (b)

—— } *BE it remembered, that on the day of , in the year of our Lord , at , in the county of , A. L. of, &c. gentle-*

(a) By the 3 Geo. IV. c. 23, the information may be laid before one justice only. (*See "Conviction," Vol. I.*)

(b) See *ante*, 286 The short precedent which appeared in former editions of this work was held bad in *R.* v.

man, [if the complaint is exhibited by the bailiff, servant, or agent of the landlord, say, "*bailiff, servant,*" or "*agent,*" as the case may be, "*of A. L., of* , *in the county of* , *gentleman*"], *in his own person came before me,* [or "*us*"], *J. P., Esquire, one* [or "*two*"] *of her Majesty's justices of the peace in and for the said county, residing near the place whence the goods and chattels hereinafter mentioned were removed,* [or, if the proceedings are before justices residing near the place where the goods and chattels were found, say, "*residing near the place where the goods and chattels hereinafter mentioned were found*"], *we or either of us not being interested in the* [here describe the place whence such goods and chattels were removed, as a "*messuage,*" "*dwelling-house,*" "*cottage,*" "*close,*" &c., as the case may be, or say, "*in the land or premises whence the goods and chattels were removed as hereinafter mentioned*"], *and* [if the complaint is exhibited by the bailiff, servant, or agent of the landlord, say, "*at the instance and on the behalf of the said A. L.,*"] *informed me,* [or "*us*"], *in writing, that A. T., of the parish of* , *in the county of* , *yeoman,* [naming the tenant], *for* [*the half of*] *a year next before and ending at and upon the* [*25th day of December*], *in the year of our Lord* , *held and enjoyed a certain* [here shortly describe the premises] *and premises, with the appurtenances, situate in the parish of* , *in the county of* , *as tenant thereof to the said A. L. under a demise thereof theretofore made, at the yearly rent of* , *payable to the said A. L.* [*half-yearly*], *to wit, on the* [*24th day of June and the 25th day of December*], *by even and equal portions; and that on the said* [*25th day of December*], *in the said year of our Lord* , *the sum of* *of the rent aforesaid,* [*for the half of a year*] *ending on the said* [*25th day of December*], *in the said year of our Lord* , *on that day in that year became and was, and still is due, in arrear, and unpaid from the said A. T. to the said A. L.; and that the said sum of* *of the rent aforesaid so being due, in arrear, and unpaid from the said A. T. to the said A. L., the said A. T. afterwards, that is to say, on the* *day of* , *in the year of our Lord* , [*and on divers other days and times afterwards, and before the day of exhibiting the said information*], *fraudulently and clandestinely conveyed away and carried off and from the said demised premises divers goods and chattels, that is to say, one &c.,* [describe the goods removed and carried away, but, perhaps, this is not absolutely requisite], *being the goods and chattels of the said A. T., and the same not exceeding the value of 50l., but being of less value, to wit, of the value of* *of lawful money of Great Britain, to prevent the said A. L. from distraining the same for the said arrears of rent,* [if the complaint be against a third person for assisting the tenant in such fraudulent carrying off his goods, say, "*and that A. O., of the parish aforesaid, in the county aforesaid, labourer, on the same day and year last aforesaid, at the parish aforesaid, in the county aforesaid, did wilfully and knowingly aid and assist the said A. T. in such fraudulent and clandestine conveying away and carrying off and from the said demised premises the said goods and chattels and every part thereof,*" or, if the complaint against such third person is for concealing the goods so fraudulently carried off the premises, say, "*and that A. O. of the parish aforesaid, in the county aforesaid, labourer, afterwards, and after the said goods and chattels were so fraudulently and clandestinely conveyed away and carried off and from the said demised premises as aforesaid, to wit, on the same day and year last aforesaid, at the parish of* , *in the county of* , *did wilfully and knowingly aid and assist the said A. T. in concealing the said goods and chattels and every part thereof*"], *contrary to the form of the statute in such case made and provided; whereby and by force of the said statute the said A. O. hath forfeited and become liable to pay to the said A. L., from whose estate the said goods and chattels were so fraudulently and clandestinely carried off as aforesaid, double the value of the said goods so by him carried off* [or "*concealed*"] *as aforesaid. Whereupon the said A. T. and A. O., after being duly summoned to answer the said charge contained in the said information, appeared on the* *day of* , *at* , *in the said county, before us the said J. P. and K. P., being two of her Majesty's justices in and for the said county, and residing near the place whence* [or "*where*"] *the said goods and chattels were removed* [or "*found*"], *and not being either of us interested in the said premises whence the said goods and chattels were removed, and having heard the charges contained in the said informa-*

Davis, 5 *B. & Adol.* 551, for not shewing that the party removing the goods was tenant. From the same case it seems that the order should state that the complainant was the party's landlord, or the bailiff, servant, or agent of such landlord.

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tion, declared that they were not guilty of the said offences so respectively charged against them as aforesaid [or as the case may happen to be]. **Whereupon we the said justices did proceed to examine into the truth of the charges contained in the said information, and on the day of aforesaid, at the parish of aforesaid, one credible witness, to wit, A. W., of , in the county of , yeoman, upon his oath deposeth and saith, in the presence and hearing of the said A. T. and A. O., that* [here state the evidence, as nearly as possible in the words used by the witness (*a*). It will be necessary to have proof of the particulars of the demise, the amount of the rent in arrear, the fact of removing the goods, and the circumstances of privacy or fraud attending it; and if the complaint is against a third person, for assisting, the fact of such assistance, and its particular manner; or if the complaint against such third person is for concealing the goods and chattels so fraudulently conveyed away by the tenant, the fact of concealing such goods and chattels, and which of them in particular, and the place where they were found so concealed, and lastly the value of the goods so removed and carried away or concealed.] *And we the said justices thereupon having duly examined into the facts and the truth of the said charges, and having examined all proper and credible witnesses upon oath, do hereby determine that the said A. T. is guilty of the said offence so charged against him as aforesaid, and that the said A. O. is also guilty of the said offence so charged against him as aforesaid. And we the said justices, having duly inquired into the value of the said goods and chattels so removed, conveyed away, and carried off as aforesaid, do find that the value of the same was and is 20l.: Wherefore we the said justices do hereby order and adjudge the said A. T. and A. O. to pay unto the said A. L.* [*or to his bailiff, servant, or agent*] *the sum of 40l., (being double the value of the said goods and chattels), on or before the day of instant. Given under our hands and seals, at , the day of , A. D. .*

(10.) Warrant of distress in case the offenders, having notice, refuse or neglect to pay pursuant to the preceeding order. (*Ante*, 284).

——} *To the constable of , and others whom this may concern.*

WHEREAS, on the day of , at , A. L., of , gentleman, &c. [proceed as in the order No. 9 to the * in the past tense, and then thus:] *Whereupon we the said justices, having examined into the facts and the truth of the said charges, and having duly examined all proper and credible witnesses upon oath, did, upon the said hearing of the said charges on the day of last, determine that the said A. T. was guilty of the said offence so charged against him as aforesaid, and that the said A. O. was also guilty of the said offence so charged against him as aforesaid. And having thus inquired into the value of the said goods and chattels so removed, conveyed away, and carried off as aforesaid, did then find that the value of the same was 20l., and we did therefore then order and adjudge that the said A. T. and A. O. should pay unto the said A. L. the sum of 40l., being double the value of the goods and chattels, on or before the day of now last past. † And whereas the said A. T. and A. O., having due notice of our said order, have refused and neglected to pay, and have not paid the said sum of pursuant thereunto, and the same hath been fully proved before us, these are therefore to command you to levy the said sum of by distress and sale of the goods and chattels of the said A. T. and A. O.: and we do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within days, unless the said sum of , for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid* (*b*); *and you are also hereby commanded to certify to us what you*

(*a*) The evidence need not, it would seem, be stated, this being an order, (see *ante*, 287), but it may be safest to state it. It will be necessary in support of the order to have proof of the particulars of the demise; the amount of the rent in arrear; the fact of removing the goods, and the circumstances of privacy or fraud attending it; and if the complaint is against a third person for assisting, the fact of such assistance and its particular manner; or if the complaint against such third person is for concealing the goods or chattels so fraudulently conveyed away by the tenant, the fact of concealing such goods and chattels, and which of them in particular, and the place where they were found so concealed; and, lastly, the value of the goods so removed and carried away or concealed.

(*b*) 27 Geo. II. c. 20, *post*, "*Distress by Justice's Warrant*," and 5 Geo. IV. c. 18, *Ib.* See *Coster* v. *Wilson*, 3 *M. & W.* 411, *ante*, 313, and *Ex parte Fuller*, 13 *Law J., N. S., M. C.*, 141, in the addenda to this work, tit. "*Distress for Rent.*"

shall do by virtue of this our warrant. Given under our hands and seals at , the day of

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(11.) Constable's return thereon of want of distress.

I, A. C., constable of , do hereby certify and , justices of the peace of , that I have made diligent search for, but do not know of nor can find any goods and chattels of , and and , or of any of them, by distress and sale whereof I may levy the sum of , pursuant to their warrant for that purpose. Dated the day of . Given under my hand this day of .

(12.) Commitment thereon to house of correction (*a*).

To the constable of , and also to the keeper of the house of correction at , in the county of .

WHEREAS, &c. [proceed as in the preceding form to the †, and then thus:] *And whereas it appears to us by the return of , constable of , dated the day of , that he hath made diligent search for, but doth not know of nor can find any goods and chattels of the said A. T., and J. O. and L. O., or any or either of them, by distress and sale whereof the said sum of may be levied, pursuant to our warrant duly made and issued for the levying the said sum of by distress and sale of the goods and chattels of the said A. T., and J. O. and L. O. These are therefore to command you the said constable of to apprehend the said A. T., and J. O. and L. O., and convey them to the said house of correction at aforesaid, and deliver them there to the said keeper of the said house of correction; and these are also to command you the said keeper of the said house of correction to receive them the said A. T., and J. O. and L. O., into the said house of correction, and there keep them to hard labour, without bail or mainprize, for the space of six months, unless the said sum of so ordered to be paid as aforesaid shall be sooner satisfied. Given under our hands and seals at , the day of .*

(13.) Recognizance on appeal against a conviction by two justices for fraudulently assisting to convey goods off the premises to avoid a distress (*b*).

BE it remembered, that, on the day of , in the year of the reign of our sovereign lady Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, defender of the faith, C. D., of , in the said county, [*farmer*], *and E. F., of , in the said county ,* [*farmer*], *personally came before us, J. P. and K. P., Esquires, two of her Majesty's justices of the peace in and for the said county, and acknowledged themselves to owe to our said lady the Queen the sum of* (*b*), *to be levied of their goods and chattels, lands and tenements, to the use of our said lady the Queen, her heirs and successors, if the said C. D. shall make default in the condition following:*

The condition of this recognizance is such, that whereas the said C. D. is this day duly convicted before us, the above-named justices of the peace, of having wilfully and knowingly aided and assisted G. H., of &c., [*farmer*], *on the day of last, in fraudulently and clandestinely removing and conveying away the goods and chattels of the said B. O. from* [describing the place, house, tenement, &c., and the parish where situate, &c.], *not exceeding the value of 50l., and in concealing the same, so as to prevent A. B., of &c., from taking and seizing the same for arrears of rent due to the said A. B. from the said G. H. for certain premises, situate at , aforesaid; for which offence the said C. D. has been adjudged to forfeit to the said A. B. the sum of , being double the value of the said goods and chattels by the said C. D. so carried off and concealed: now if the said C. D. shall personally appear at the next* [*quarter sessions*] *of the peace to be held at , for the said county of , and commence and prosecute an appeal against the said*

(*a*) See stat. 11 Geo. II. c. 19, ss. 5 and 6, *ante*, 284.

(*b*) The amount must be double the sum ordered to be paid by the conviction. See the 11 Geo. II. c. 19, s. 6, *ante*, 284.

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conviction, and pay such costs as shall be then and there awarded by the said court against the said C. D., and not depart without leave of the court, then this recognizance to be void.

Acknowledged before us, J. P.
K. P.

(14.) Complaint on 11 Geo. 2, c. 19, s. 7, before a justice, where goods, being fraudulently removed, are secured in a dwelling-house, to prevent them from being taken as a distress for rent. (See the act, *ante*, 283).

——} *BE it remembered, that, this day of , A. D. , A. I., of , yeoman, complaineth and maketh oath that certain goods and chattels of A. O., of , yeoman, have within thirty days last past been fraudulently and clandestinely conveyed and carried away from by the said A. O., his servant or servants, agent or agents, or other person or persons, aiding or assisting therein, to prevent A. B. from distraining the said goods and chattels for arrears of rent due to the said for the said , and that the said goods and chattels are put, placed, or kept in the house [barn, stable, outhouse, yard, close, or other place] of , at , locked up, fastened, or otherwise secured so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent: and that the said A. I. hath a reasonable ground to suspect, and doth suspect, that the said goods and chattels are in the [dwelling-house] of the said , at .*

Taken and sworn at , the day of , before *A. I.*

(15.) Warrant thereon to follow and search for goods fraudulently removed to prevent a distress. (See the act, *ante*, 283).

——} *To all constables, and other her Majesty's officers of the peace, whom these to wit.* *may concern.*

WHEREAS A. B., of &c., hath this day of exhibited his complaint and made oath before me, J. P., one of her Majesty's justices of the peace for the said county of , that certain goods and chattels of E. F. have been within thirty days last past fraudulently and clandestinely conveyed and carried away from a certain [house] and premises, situate &c., by the said E. F., his servant or servants, agent or agents, or other person or persons aiding or assisting therein, to prevent the said A. B. from distraining the said goods and chattels for arrears of rent due from the said E. F. to the said A. B. for the said house and premises. And that the said goods and chattels are put, placed, and kept in the house, [barn, stable, outhouse, yard, close], or other place of the said E. F., [or "of J. H."], situate and being in &c., in the parish of &c., within the said county, locked, fastened, or otherwise secured, so as to prevent the said goods and chattels from being taken and seized as a distress for arrears of rent; and that the said A. B. hath a reasonable ground to suspect, and doth suspect, that the said goods and chattels are in the said house [barn, &c.] of &c. These are therefore to command you, and each and every of you, to aid and assist the said A. B., his steward, bailiff, receiver, or other person or persons empowered to take and seize as a distress for rent the said goods and chattels, in the day-time, to break open and enter into the said house, [barn, stable, outhouse, yard, close], or other place of the said &c., at &c. aforesaid, and to take and seize the said goods and chattels for the said arrears of rent, according to law. Given under my hand and seal, at &c., the day of, &c.

J. P. (L. S.)

(16.) Information for a rescous and pound breach at common law. (See *ante*, 312).

——} *THE information and complaint of A. I., constable of , [as the case may be], in the said county, taken and made upon oath before me, J. P., Esquire, one of her Majesty's justices of the peace in and for the said county, the day of , in the year of our Lord one thousand eight hundred and ; who says, that, as constable of the said parish of , [or "bailiff," &c., or as the case may be], he received a warrant under the hand and seal of E. E., Esquire, [or "me," as the case may be], one of her Majesty's justices of the peace in and for the said county of , bearing date the day of , instant, by which he, the said constable, was commanded to sell such and so much of the goods and chattels of A. O., late of , in the said county, yeoman, as should satisfy and pay T. K., constable of the aforesaid parish of , the sum of , being the charges of conveying the said A. O. to the house of correction [or as the case may be] of the said county, at , in the said county, to which house of correction [or as the case may be] he the said A. O. was committed for a misdemeanor [or "felony," as the case may be], by a warrant under the hand and seal of the said E. E.; that under the said warrant first before mentioned he the said informant*

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yesterday morning, being the day of instant, took a distress on a quantity of potatoes [or as the case may be], *belonging to the said A. O., in a house in the village of , in the parish of , in the county aforesaid, and put a lock on the door; but that last evening the said lock so placed on the said distress was wilfully broken by B. O.* [or, "*the said A. O.*" as the case may be], *of , in the said county,* [*labourer*], *and that the said potatoes, so taken as a distress, were rescued by the said B. O.* [or "*A. O.*" as the case may be], *in breach of the peace, and to the delaying of justice. He therefore prays that hue and cry may be levied against the said B. O.* [or "*A. O.*" as the case may be], *for the said rescous and pound breach, as against those who break the peace.*

Before me, *A. I.*
J. P.

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(17) Order and judgment of the justice before whom complaint is preferred on 57 Geo. 3, c. 93, for taking too much costs, where the order and judgment is for the complainant (a).

IN the matter of the complaint of A. B. against C. D. for a breach of the provisions of an act of the fifty-seventh year of his late Majesty King George the Third, intituled An Act [here insert the title of this act, *ante*, 304], *I. E. F., a justice of the peace for the county of , and acting within the division of , do order and adjudge that the said C. D. shall pay to A. B. the sum of , as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a distress for rent, and the further sum of for costs on this complaint.*

(*Signed*) *E. F.*

(18.) Order and judgment of the justice on like statute, where he dismisses the complaint as unfounded, and with or without costs (a).

IN the matter of the complaint of A. B. against C. D. for the breach of the provisions of an act of the fifty-seventh year of his late Majesty King George the Third, intituled An Act [here insert the title of this act, *ante*, 304], *I, E. F., a justice of the peace for the county of , and acting within the division of , do order and adjudge that the complaint of the said A. B. is unfounded,* [if costs are given, "*and I do further order and adjudge, that the said A. B. shall pay unto the said C. D. the sum of for costs.*"]

(*Signed*) *E. F.*

Distress by Justice's Warrant.

[7 & 8 Will. III. c. 34; 1 Geo. I. st. 2, c. 6; 27 Geo. II. c. 20; 33 Geo. III. c. 55; 5 Geo. IV. c. 18.]

When it may be granted.

A distress by warrant of a magistrate is usually issued for the purpose of compelling payment of a penalty or costs, and payment also of a debt or duty.

A magistrate has no power whatever at common law to issue such a warrant, his authority for that purpose can only be derived from act of Parliament, and then only in case it is expressly given. He therefore must be guided in his proceedings in this respect by the express enactment of the legislature.

Demand before issuing.

Sometimes this authority is given by the statute, directing the magistrate to exercise it *immediately* upon non-payment of the penalty; in other cases, only upon failure of payment after a certain number of days. In the latter case no demand is, it seems, necessary to enable the magistrate to issue the warrant after the expiration of the time limited for payment. (*Wootton* v. *Harvey*, 6 *East*, 75; *Paley*, 234).

The demand required by 43 Geo. III. c. 99, s. 33, previously to a distress being levied for assessed taxes, need not be made in writing, nor personally on the party from whom they are due; it is sufficient if a

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(*a*) The form is prescribed by the act, *ante*, 305.

demand has in fact been made, and there has been a refusal on the ground of inability to pay, or for any other cause. (*Rex* v. *Ford*, 2 *Adol. & Ell.* 588). It is not essential that the demand to which the refusal applies, should have specified the precise amount claimed, if the debtor understood what the amount was, and did not object to it. (*Ib.*)

As to when a demand and refusal of a land tax or assessed tax rate is necessary before distress, *see Gibbs* v. *Stead*, 8 *B. & Cres.* 528; tit. "*Land Tax*," *Vol. III.*

Before a party is distressed on for a sewer's rate a demand should be made. (*Style*, 13).

Summons before issuing.

In a distress for poor rates, a summons is necessary before issuing the warrant, (*R.* v. *Benn*, 6 *T. R.* 198. *And see R.* v. *Justices of Stafford*, 3 *Ad. & Ell.* 425, *post*, "*Poor*," *Vol. IV.*).

And the same should be issued in most cases where the distress is for a mere rate or assessment.

And accordingly where by statute establishing a gas-light company it was enacted, that if any person should refuse or neglect for ten days after demand to pay any rent due from him to the company for the supply of gas, such rent should be recovered by the company or their clerk by warrant of any justice of the peace for the town, &c.; and it should be lawful for the company or their clerk, or any person acting under their authority, with such warrant, to levy the sum so due by distress and sale of the goods of the party so neglecting or refusing to pay, or the same might be recovered by action, &c. It was held that a warrant so issued by a justice, without previously summoning and hearing the party to be distrained upon, was illegal, though a summons and hearing were not in terms required by the act. (*Painter* v. *Liverpool Gas Company*, 3 *Ad. & Ell.* 433).

In the same case it was decided, as a general rule, that where a magistrate grants a warrant in the nature of execution, he is bound first to summon and hear the parties, unless the statute under which he acts clearly renders the discharge of that function ministerial only, or in some other manner dispenses with the summons and hearing. (*Ib.*)

In trover for distraining plaintiff's goods, the company justified under the above warrant, and stated that it was issued on the complaint of their collector, and that he, by virtue of it and under their authority, seized the plaintiff's goods for the purpose of levying a sum owing by him to them and duly demanded according to the act. It was also held, that the warrant, although it would have protected the clerk or an officer, was no justification to the company, they not having acted in obedience to it, but having put it in force as parties. (*Ib.*)

Oath before issuing.

If an oath or affirmation be required before granting the warrant of distress, the same may be made before any justice acting under the statute which authorizes the levy. (15 Geo. III. c. 39; tit. "*Oaths*," *Vol. V.*)

By whom to be granted.

The warrant may in all cases be granted by one justice, though the conviction be by two, and the justice who grants it need not be one of the justices who made the conviction. (3 Geo. IV. c. 23, s. 2; tit. "*Conviction*," *Vol. I.*)

Mandamus to issue.

If the magistrate improperly refuse to issue the distress warrant, the Court of Queen's Bench will grant a *mandamus* against him to compel him to issue it. (*See* "*Justices*," *Vol. III.*)

Best not to issue in case of doubt.

But if there be *reasonable* ground for the magistrate's doubting his authority to grant the warrant, he had better not do so; and the court would not compel him to act. (*R.* v. *Bucks, JJ.*, 1 *B. & Cres.* 485; 1 *D. & R. Mag. Ca.* 366, S. C.)

And where a local act of Parliament declares that it shall be lawful for justices to issue their warrant to levy a rate imposed by certain commissioners under that act, upon a neglect or refusal to pay the rate; but does not contain any language directly making it compulsory on them to issue it, they may refuse to issue the warrant till the party has

been summoned before them, and the court will not compel them by *mandamus* to issue a warrant in the first instance without any summons. Where in such an act the power of entertaining an appeal against a rate is in the commissioners appointed under the act and not in the justices, the latter may still reasonably require the party to be summoned before them previously to their issuing their warrant. The provisions of such an act must be treated in that respect like those of the 43 Eliz. (*R.* v. *Justices of Stafford*, 3 *Ad. & Ell.* 425; *and see Painter* v. *Liverpool Gas Company, post*).

By a local act commissioners were empowered to make paving rates, and to hear and relieve parties complaining of such rates. The act also gave an appeal from the commissioners to the sessions. And it provided that on non-payment of rates for seven days after personal demand, it should be lawful for certain justices upon proof on oath of such demand and non-payment to issue a distress warrant. Justices being applied to for such warrant refused to grant it; but stated that they would do so if a proper information were sworn, and the party summoned before them. The court refused a *mandamus* to compel the justices to issue a warrant without summoning the party. Supposing that the act authorized the justices to grant a warrant without a summons, it was held nevertheless that they acted rightly in not so granting it. (*R.* v. *Hughes*, 3 *Ad. & Ell.* 425).

Warrant during an appeal.

Several statutes give a power of appeal to the party convicted, and at the same time provide that, upon the appeal and security given for the prosecuting it, the distress shall be stayed until the appeal be determined. In such cases, after the determination of the appeal, if the time limited for making the distress be expired, the magistrate may it seems issue his warrant immediately without any fresh demand, for the time runs from the order. (6 *East*, 75). But if the warrant has been issued before and suspended by the appeal, it is better after the decision of the appeal to apply to the magistrate and lay the facts before him, before proceeding to the execution of the warrant. (Per *Lawrence*, J., *Wooton* v. *Harvey*, 6 *East*, 79; *Paley*, 234).

Suspension of warrant.

It seems doubtful if justices have in any case a right to revoke or suspend a warrant after they have once issued it, at least when third parties have become interested in having the execution of the warrant. If the warrant were a nullity, it might perhaps be suspended. But where justices are empowered to settle and allow the accounts of a public officer, and, in case of a neglect or refusal by such officer, for fourteen days after the allowance, to pay over the balance found to be due from him, are directed, upon application of the parties interested, to issue a distress warrant for such balance, they cannot after issuing a warrant in conformity with the power given to them, but before execution of it, order that the execution be suspended, on the ground of an error in the settlement of the accounts, unless the parties interested consent to such suspension. (*Barons* v. *Luscombe*, 3 *Ad. & Ell.* 589).

Form of warrant.

With respect to the warrant of distress itself, it is directed to the constable or other proper officer of the parish or district in which the goods to be distrained upon are to be found. It then shortly recites the conviction, and commands the officer to levy the sum specified, directing to whom it is to be paid. It should state when the distress is to be sold. (27 Geo. II. c. 20, *post*, 325). It should be warranted by the conviction. (*Reg.* v. *Wyatt*, 2 *Ld. Raym.* 1189; *Rogers* v. *Jones*, 3 *B. & Cres.* 409; *Daniel* v. *Phillips*, 5 *Tyr.* 293). And all those facts must appear upon the face of it which are necessary to give jurisdiction to the justice over the subject-matter. (*Day* v. *King*, 5 *Ad. & Ell.* 359; *Johnson* v. *Reid*, 6 *M. & W.* 124). Very often the form of the warrant is prescribed by the act allowing it to be issued.

Should be in writing, &c.

The warrant must be in writing, and in general under the hand and seal of the magistrate. (*See Hutchinson* v. *Lowndes*, 4 *B. & Ad.* 118; "*War-*

rant," Vol. VI.) But in *Padfield* v. *Cabell*, (*Willes, Rep.* 411), it was held that a warrant of distress, granted by two justices under stat. 9 Geo. II. c. 23, which refers to stat. 12 Car. II. c. 24, s. 45, on a conviction for selling spirituous liquors without a license, need not be *under the seals* of the justices; it is sufficient if it be *under their hands*. (*See further "Warrant," Vol. VI.*)

When warrant bad in part, is bad for the whole.

If one warrant only be made for levying a good and a bad rate, the warrant, it seems, is bad for the whole, and the distress cannot in any way be supported. (2 *W. Bla.* 1330).

One distress under several warrants, one of which is defective.

But if a joint distress be made under four several warrants, for four several rates, of which one is bad, the distress is not therefore void. If a party enter and make a joint distress for four several rates, being furnished for that purpose with four warrants, one of which is bad, he may in a replevin for such distress justify under the good warrants and abandon the bad one; and if the causes of taking are distinct, and the avowries separate, he will be entitled to a return of all the goods. Where some of the avowries justified the whole taking under good warrants only, and the plaintiff alleged in answer to each of the avowries, that the whole distress was taken jointly under the four warrants, of which one was bad, and the defendant did not on the record contradict that allegation; it was held, nevertheless, that the defendant was entitled to judgment and a return of all the goods. But in such case an action may possibly be maintained for an excessive distress. (*Governor, &c. of Poor of City of Bristol* v. *Wait*, 1 *Ad. & Ell.* 264; *Burn's J. 27th ed.* 992).

Distress for several rates where some invalid.

In replevin the defendants made avowry under a distress warrant for poor rates. The warrant was to levy a gross sum, made up of several rates, some of which had not been published on the Sunday after allowance, but the plaintiff had not appealed against them; held, however, that as the rates, of which due notice had not been given, were invalid, the distress was illegal. (*Sibbald* v. *Roderick*, 11 *Ad. & Ell.* 38; *and see Charlton* v. *Alway*, 11 *Ad. & Ell.* 993).

Who to execute it.

The constable or parish officer, or other known officer in a borough or other special jurisdiction, is the proper person to execute the warrant. (*Paley*, 235). He is bound to execute and return the warrant, if delivered to him in a reasonable time, and is punishable for neglect. (*Fortes.* 127; 2 *Lord Raym.* 1189; 1 *Salk.* 380, *post*, 329).

By the 5 Geo. IV. c. 18, s. 6, (*post*, 329), constables may execute warrants addressed to them in their character of constables out of their precincts, provided it be within the jurisdiction of the justice granting or backing the same.

The constable is not protected by the warrant, though it be valid on the face of it, if the justices have no jurisdiction to issue it; but if the justices have jurisdiction, and merely act inverso ordine, or irregularly, the constable will then be protected by the warrant. (*Morrell* v. *Martin*, 4 *Scott, N. R.* 300).

Mode of execution.

The mode of executing warrants in general will be found treated of under title "*Warrant*," *Vol. VI.*

In cases of distress for the levying of penalties there seems to be no power to break open doors or gates, in case they are locked up or shut, unless such penalty or part thereof be given to the king; which matter may seem to require some consideration. (*See* 2 *Hawk.* c. 14, s. 5; 2 *Jones*, 233; *Theobald* v. *Critchmore*, 1 *B. & Ald.* 227; *Launock* v. *Brown*, 2 *B. & Ald.* 592; *Parton* v. *Williams*, 3 *B. & Ald.* 330). And as to breaking open doors in general, *post*, "*Warrant*," *Vol. VI.*; "*House*," *Vol. III.*

It should seem that in general the law as to what may be taken in execution under a writ of *fieri facias* would be here applicable. (And as to which, *see Tidd's Prac. 9th ed.* 1001, *&c.*; 1 *Arch. Pr. by Chit.* 425).

What may be seized.

It has been decided that *averia carucæ* or implements of trade may

be distrained for a poor's rate, although there be other sufficient distress; for the distress in this case is in nature of an execution. (*Hutchins* v. *Chambers*, 1 *Burr.* 579; *Com. Dig. Distress, C.*)

If the party convicted be a feme covert, the goods of the husband are not in general liable to be distrained on, unless there be an express authority for it in the act of Parliament allowing the distress, as there is in the 22 Car. II. c. 1. (*See* 11 *Co.* 61 b; *Paley*, 237). Against feme covert.

The constable distraining has no power to impound the goods on the premises, and cannot remain longer than a reasonable time to enable him to remove the goods. (*Peppercorn* v. *Hofman*, 9 *M. & W.* 618). Impounding distress on premises.

By the 27 Geo. II. c. 20, s. 2, *infra*, the officer, upon the execution of the warrant, is bound, if required, to show it to the person whose goods are distrained, and to suffer a copy of it to be taken. Showing warrant.

Sale.]—Before the stat. 27 Geo. II. c. 20, there was no time limited for the sale of the goods; by section 1 however of that act it is enacted, "that in all cases where any justice of the peace is or shall be required or empowered, by any act of Parliament, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by or in consequence of such act, it shall be lawful for the justices granting such warrant therein to order and direct the goods and chattels so to be distrained to be sold and disposed of within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than eight days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, be sooner paid." Justices to limit in warrants of distress the time for sale. 27 Geo. 2, c. 20, s. 1. Not less than four, nor more than eight days.

It had before been solemnly resolved that these words in an act of Parliament, "to be levied by distress," must be understood of "distress and sale." (*R.* v. *Speed*, 1 *Salk.* 379, *Carth.* 502; 1 *Ld. Raym.* 583, S. C.; *Morley* v. *Stacker*, 6 *Mod.* 83; *Com. Dig. Distress, D.* 7).

The sale ought to be by the officer for ready money, and if he sells on credit, he will be liable for the produce. (*Semble, Morley* v. *Stacker*, 6 *Mod.* 83). Should be for ready money.

It is doubtful whether a sale under a defective or void warrant passes any property in the goods even to a *bonâ fide* purchaser. (*Lock* v. *Sellwood*, 1 *G. & Dav.* 366). Under a void warrant.

Costs and Charges.]—Before the 18 Geo. III. c. 19, (*ante*, 179), except where special provision was made for levying the costs and charges, no more than the mere penalty could in any case be levied. That act, however, first empowered the justice to give costs, and at the same time authorized the recovery of the amount in addition to the penalty, if under £5. If the penalty amounts to or exceeds that sum, the costs are still to be deducted out of it, provided the deduction does not exceed one-fifth of the penalty. Costs and charges.

The costs of the distress are given by several statutes, in certain cases of warrants of distress; though it seems, from the case of *Moyse* v. *Cocksedge*, (*Will.* 636), that such a power is impliedly given in all acts that authorize the levying of a sum of money by a warrant of distress.

To remove all doubts, however, the stat. 27 Geo. II. c. 20, after authorizing by sect. 1, *supra*, the sale of the distress in case of non-payment of the penalty, &c., and costs, by sect. 2 enacts, "that the officer making such distress shall and is hereby empowered to deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising by such sale; and the overplus (if any) after such charges, and also the said penalty or sum of money shall be fully satisfied and paid, shall be returned on demand to the owner of the goods and chattels so distrained; and the officer so executing such warrant, if required, shall show the same to the person whose goods and chattels are distrained, and shall suffer a copy thereof to be taken." Officer to deduct charges of taking, keeping, and selling. 27 Geo. 2, c. 20, s. 2. Copy of warrant.

Quakers excepted.

Sect. 3. But this shall not extend to alter any provisions relating to distresses to be made for the payment of tithes and church-rates by the people called Quakers, contained in stats. 7 & 8 Will. III. c. 34, and 1 Geo. I. stat. 2, c. 6. (See the 53 Geo. III. c. 127, s. 6, tit. "*Church or Chapel*," *Vol. I.*)

Mode of ascertaining amount of charges.

There is no power given by this act to the justices to ascertain such charges; therefore it seemeth that the officer executing the warrant shall be the sole judge thereof in the first instance; and afterwards, if the owner of the goods distrained shall be dissatisfied, the reasonableness thereof shall be determined by a judge and jury upon an action brought.

But by special statutes, this power of ascertaining the charges of distress and sale is sometimes given to the justices, as is set forth under the respective titles throughout this work.

Quakers' tithes and church and other rates, taxes, &c.

The above-mentioned statutes of the 7 & 8 Will. III. c. 34, and 1 Geo. I. st. 2, c. 6, relate not only to *tithes and church rates*, (by which last seemeth only to be understood the churchwardens' rate for the repair and other uses of the church), but also to any customary or other rates, dues, or payments belonging to any church or chapel, which of right by law and custom ought to be paid for the stipend or maintenance of any minister or curate officiating in any church or chapel. Therefore, for any thing that appears from the words of this statute, unless it be in the case of *tithes* or *church rates*, the justices may order the distress for those other dues and payments to be detained for a certain time, and the officer may deduct the charges not only of *distraining*, but also of *keeping* and *selling* the distress; whereas by those former acts above mentioned, the officer was only allowed to deduct the necessary charges of *distraining*.

By 7 & 8 Geo. IV. c. 17, (tit. "*Church*," *Vol. I.*), the provisions of the 57 Geo. III. c. 93, (*ante*, 304), regulating the costs of distresses for rent not exceeding 20*l.*, are extended to distresses not exceeding 20*l.* for land tax, assessed taxes, poor's rates, church rates, tithes, highway rates, sewers rates, or any other rates, taxes, impositions, or assessments whatever.

Defendant removing out of jurisdiction.

Defendant removing out of Jurisdiction of the Justice.]—Formerly there was no means of levying the penalty if the offender was not possessed of sufficient goods to answer it within the jurisdiction of the convicting magistrate, for the levy could not be made elsewhere.

Where distress cannot be found in the jurisdiction of the justices granting warrants, it may be levied in any other place.

33 Geo. 3, c. 55, s. 3.

But now, by stat. 33 Geo. III. c. 55, s. 3, reciting, "And whereas warrants of distress granted by justices of the peace are sometimes ineffectual, by reason of the goods and chattels of the person, against whom such warrants are granted, being out of the jurisdiction of the justice granting the same," it is enacted, that in all cases where any penalty, forfeiture, fine, or other money may by warrant of any justice of the peace be directed to be levied by distress and sale of the goods and chattels of any person, if sufficient distress cannot be found within the limits of the jurisdiction of such justice, on oath thereof made by one witness before any justice of any other county or place, (which oath shall be by him certified by indorsement on such warrant), such penalty, forfeiture, fine, or other money, or so much thereof as may not have been before levied or paid, shall and may, by virtue of such warrant and indorsement, be levied by the person to whom such warrant was originally directed, by distress and sale of the goods and chattels of such person in such other county or place; to be applied in like manner as if sufficient distress had been found within the jurisdiction of the magistrate originally granting such warrant; and if no such distress can be found, such offender shall be proceeded against according to law: provided that no justice who shall indorse any certificate upon, or authorize the execution of any such warrant of distress which may not have been granted within his jurisdiction, shall be answerable for any

If no distress found, offender to be proceeded against according to law.

Backing magistrate not answer-

irregularity which may have been committed or done in or about the obtaining or granting of such warrant of distress.

able for irregularity.

By the 5 Geo. IV. c. 18, s. 6, (*post*, 329), constables may execute warrants out of their precincts, provided it be within the jurisdiction of the justice granting or backing the same.

Constable's jurisdiction.

Remedy by Commitment, &c. where no sufficient Distress.]—By stat. 5 Geo. IV c. 18, intituled "*An Act for the more effectual Recovery of Penalties before Justices and Magistrates on Conviction of Offenders; and for facilitating the Execution of Warrants by Constables,*" reciting that, "by several acts, certain penalties and forfeitures are imposed on persons for offences committed against the directions of such acts, which are directed to be recovered before any justice or justices of the peace, or any magistrate or magistrates, within their respective jurisdictions; and on non-payment thereof, such penalties and forfeitures, together with the reasonable costs and charges attending the several convictions, are directed to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal of such justice and magistrates respectively: and whereas no power is given to such justices and magistrates, on conviction of such offenders, to detain him, her or them in custody till return is made to the warrant of distress, for the purpose of ascertaining whether such offenders have any goods and chattels to satisfy such penalties, forfeitures, costs and charges, whereby such offenders frequently escape any punishment for their offences:" it is enacted, "that from and after the passing of this act, (31 Mar. 1824), whenever any *penalty* or *forfeiture* is or shall be directed to be recovered before any justice or justices of the peace, or magistrate or magistrates for any county, riding, soke, city, division or place, and such justice or justices of the peace, magistrate or magistrates, is or are authorized and empowered, on the conviction of the offender or offenders, in default of payment of such penalty or forfeiture, together with the reasonable costs and charges attending such conviction, to cause the same to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant or warrants under the hand and seal of such justice or magistrate, or hands and seals of such justices or magistrates, together with the reasonable costs of such distress and sale; and in case upon a valuation being taken of the goods and chattels of the offender or offenders, sufficient distress for the payment of all such penalties and forfeitures and other costs and charges cannot be found, or in case it shall appear to such justice or justices, magistrate or magistrates, either by the confession of the offender or offenders or otherwise, that the offender or offenders has or have not sufficient goods or chattels whereupon the same may be levied, within the jurisdiction of such justice or justices, magistrate or magistrates, no sale shall take place of the goods and chattels of such offender or offenders, but it shall be lawful for such justice or justices, magistrate or magistrates, to commit such offender or offenders to the common gaol or house of correction, for such time and in such manner as in such acts respectively mentioned and directed, then and in every such case it shall and may be lawful to and for such justice or justices, magistrate or magistrates, at his or their discretion, to order the offender or offenders so convicted to be kept and detained in safe custody until return shall be made to such warrant or warrants of distress, unless such offender or offenders shall give sufficient security, to the satisfaction of such justice or justices, magistrate or magistrates, for his, her or their appearance before him or them on such day or days as shall be appointed for the return of such warrant or warrants of distress, such day or days not being more than eight days from the time of taking such security; and such security such justice or justices, magistrate or magistrates, is and are hereby empowered to take by way of recognizance or otherwise, as to him or them shall seem right and proper; or in case it shall appear to the satisfaction

Commitment where no distress.

5 Geo. 4, c. 18.

When a penalty is directed to be recovered before a justice, on default of payment, justice may distrain on offender's goods.

In default of sufficient distress no sale of goods shall take place, but offender may be committed, unless security be given, &c.

5 Geo. 4, c. 18

Proviso for the case of no goods within the jurisdiction.

of such justice or justices, magistrate or magistrates, either by the confession of the offender or offenders or otherwise, that he, she or they hath not or have not goods or chattels within the jurisdiction of such justice or justices, magistrate or magistrates, sufficient whereon to levy all such penalties and forfeitures, costs and charges, such justice or justices, magistrate or magistrates, may at his or their discretion, without issuing any warrant of distress, commit the offender or offenders for such period of time, and in such and like manner, as if a warrant of distress had been issued and a *nulla bona* returned thereon."

In cases where penalties are directed to be recovered by distress, but no remedy provided where sufficient distress cannot be found, justices may commit the offender, &c.

Sect. 2. "And whereas by some acts certain penalties or sums of money are to be recovered before a justice or justices of the peace, or a magistrate or magistrates, and he or they is and are authorized to issue forth his or their warrant for levying such penalties or sums of money by distress and sale of the goods and chattels of the offender or defendant; but no further remedy is provided in case no sufficient goods and chattels can be found whereon to levy such penalties or sums of money; for remedy whereof, be it further enacted, that whenever it shall appear to any such justice or justices of the peace, magistrate or magistrates, by whom any penalty or sum of money is adjudged to be paid, upon the return of any such warrant of distress, that no sufficient goods and chattels of the offender or defendant can be found whereon to levy the sum adjudged to be paid, and all costs and charges, within the jurisdiction of such justice or justices, magistrate or magistrates, or in case it shall appear to such justice or justices, magistrate or magistrates, either by the confession of the party or parties, or otherwise, that he, she, or they have not sufficient goods and chattels within the jurisdiction of such justice or justices, magistrate or magistrates, sufficient whereon to levy such sum of money, costs and charges, such justice or justices, magistrate or magistrates, at his or their discretion, and without issuing any warrant of distress, may proceed in such and the like manner as if a warrant of distress had been issued and a *nulla bona* returned thereon; and it shall be lawful for such justice or justices, or magistrate or magistrates, to issue forth his or their warrant for committing such offender or defendant to the common gaol for any term not exceeding three calendar months, unless the sum adjudged to be paid, and all costs and charges of the proceedings, shall be sooner paid; provided always, that the amount of such costs and expenses shall be specified in such warrant of commitment."

For a term not exceeding three months.

If offender, after committal to prison, pay amount of penalty and costs, he shall be discharged

Sect. 3. "In the case of any offender or offenders committed to the common gaol or house of correction for default of payment of such penalty or forfeiture, together with the reasonable costs and charges attending the conviction, if such offender or offenders shall at any time, during the period of his, her, or their imprisonment, pay or cause to be paid to the governor or keeper of the prison, the full amount of such penalty, together with the costs and charges, it shall be lawful for such governor or keeper of such prison, and he or they are hereby required forthwith to discharge such offender or offenders from his or their custody."

Justices empowered to commit to prison without issuing warrant of distress in certain cases.

Sect. 4. "And whereas cases may occur where the recovery of such penalty or forfeiture by distress and sale of the goods and chattels of the offender or offenders may appear to the justice or justices of the peace, or magistrate or magistrates, for any county, riding, soke, city, division or place, to be attended with consequences ruinous, or in an especial manner injurious to the offender or offenders and their family or families; be it enacted, that the justice or justices, and magistrate or magistrates aforesaid, shall be empowered, and they are hereby authorized, in all cases and upon all such occasions as to them shall seem fit, and where such consequences are likely to arise, to cause to be withheld the issue of any warrant or warrants of distress, and to commit the offender or offenders aforesaid immediately after conviction, and in default of payment of the penalty or forfeiture, with costs and charges, to the

common gaol or house of correction, for such time and in such manner as are in such acts respectively mentioned and directed: provided always, that it be by the desire or with the consent in writing of the party or parties upon whose property the penalty or forfeiture is to be levied."

5 Geo. 4, c. 18.

Consent of party.

Sect. 5. "Nothing herein contained shall extend or be construed to extend to that part of the United Kingdom of Great Britain and Ireland called Scotland."

Act not to extend to Scotland.

The above enactments of 5 Geo. IV. c. 18, extend only to the recovery of *penalties* or forfeitures before justices, and not to debts, (*Wyles* v. *Cooper*, 3 *Ad. & Ell.* 524); and therefore, where a master was ordered under the 20 Geo. II., and 4 Geo. IV., to pay his servant wages due to him, and refused to pay same, and there was no sufficient distress, it was held the justice had no power to commit him for the default in payment. (*Ib.*)

Act extends to penalties only.

The warrant of commitment under this enactment must be in writing; and the detention of the party without such written warrant cannot be justified for any longer time than is absolutely requisite for making it out. (*Hutchinson* v. *Lowndes*, 4 *B. & Adol.* 118). And see further as to commitments in execution, "*Commitment in Execution*," *Vol. I.*

Commitment must be in writing, &c.

Constables may in certain Cases execute Warrants out of their Precincts.]—By 5 Geo. 4, c. 18, s. 6, "whereas warrants addressed to constables, headboroughs, tithingmen, borsholders, or other peace officers of parishes, townships, hamlets or places, in their characters of and as constables, headboroughs, tithingmen, borsholders or other peace officers of such respective parishes, townships, hamlets or places, cannot be lawfully executed by them out of the precincts thereof respectively, whereby means are afforded to criminals and others of escaping from justice: for remedy whereof, be it further enacted, that it shall and may be lawful to and for each and every constable, and to and for each and every headborough, tithingman, borsholder or other peace officer for every parish, township, hamlet or place, to execute any warrant or warrants of any justice or justices of the peace, or of any magistrate or magistrates within any parish, township, hamlet or place, situate, lying, or being within that jurisdiction for which such justice or justices, magistrate or magistrates, shall have acted when granting such warrant or warrants, or when backing or indorsing any such warrant or warrants, in such and the like manner as if such warrant or warrants had been addressed to such constable, headborough, tithingman, borsholder or other peace officer, specially by his name or names, and notwithstanding the parish, township, hamlet or place in which such warrant or warrants shall be executed, shall not be the parish, township, hamlet or place for which he shall be constable, headborough, tithingman or borsholder, or other peace officer, provided that the same be within the jurisdiction of the justice or justices, magistrate or magistrates, so granting such warrant or warrants, or within the jurisdiction of the justice or justices, magistrate or magistrates, by whom any such warrant or warrants shall be backed or indorsed."

Constables may execute warrants out of their precincts, provided it be within the jurisdiction of the justice granting or backing the same.

See this section, and the reason of passing it, and law and decisions thereon noticed, under tit. "*Constable*," *Vol. I.*

It does not compel constables to execute warrants not directed to them out of their own precincts, nor does it apply to warrants of the judges. (*Gimbert* v. *Coyney*, 1 *M'Clel. & Y.* 469; *Gladwell* v. *Blake*, 1 *C. M. & R.* 636).

Return of Warrant.]—The constable is bound to certify to the justice, at the time assigned for the return of the warrant, what he has done upon it. (*R.* v. *Wyatt*, 1 *Salk.* 380). He need not, nor should he re-

Return of warrant.

Forms.

turn the warrant itself, for that is for his own justification. (*R.* v. *Wyatt*, 2 *Ld. Raym.* 1196).

If the constable refuses to certify what he has done, or if he has levied the penalty and refuses to pay it over, he may be proceeded against by indictment or information; or it seems the justices before whom the warrant is returnable may fine him. (*Paley*, 244). The Court of Queen's Bench will not grant a *mandamus*. (*R.* v. *Nash*, 2 *Ld. Raym.* 996; *Morley* v. *Stacker*, 6 *Mod.* 83; "*Constable*," *ante*, *Vol. I.*)

Replevin, when it lies.

Replevin.]—It may be as well to observe, that where goods are taken by way of a levy, as for a penalty on a conviction under a statute, it is generally in the nature of an execution; and unless replevin be given by the statute, it will not lie, the conviction being conclusive and its legality not questionable in replevin. (*Fenton* v. *Boyle*, 2 *New Rep.* 399; 6 *Bac. Abr.* 5th ed. 58, *Replevin*, (O.); *Com. Dig. Action*, (M.); *Willes*, 673, n. *b.*; *Wilson* v. *Weller*, 1 *B. & B.* 57; *Fawcet* v. *Fowlis*, 7 *B. & C.* 398).

In some cases where a special inferior jurisdiction is given to justices, and they exceed it, replevin lies. (*Willes*, 673, n. *b.*) It lies for goods distrained under a warrant from commissioners authorized by act of Parliament to levy rates for specific local purposes, with power of distress. (1 *Swanst.* 301; and see *Wilson* v. *Weller*, 1 *B. & B.* 57). It lies to try the legality of a distress for poor rates, where there is a total want of jurisdiction; as if the party distrained on was not an occupier; (*see Governors of Bristol Poor* v. *Wait*, 1 *Ad. & El.* 264; *Sibbald* v. *Roderick*, 11 *Ad. & Ell.* 38; *Fawcett* v. *Fowlis*, 7 *B. & C.* 398; *Dewell* v. *Marshall*, 3 *Wils.* 442; *Herbert* v. *Waters*, 1 *Salk.* 205; 1 *Ld. Raym.* 59, S. C.; *Fletcher* v. *Wilkins*, 6 *East*, 283); or for a sewers' rate, (*Pritchard* v. *Stephens*, 6 *T. R.* 522; *Hard.* 478).

Forms.

(1.) General form of warrant of distress for penalty and charges of distress

[*Kent.*]—*To the Constable of in the said county, and to all other Constables in and for the said county.*

WHEREAS C. D., late of in the said county, [*labourer*], *was on this day* [or, "*on the day of instant*"], *duly convicted before* [*me*], *J. P., one of her Majesty's justices of the peace for the said county, for that he the said C. D.* [&c. state the offence, as in the conviction], *against the form of the statute in that case made and provided; and* [*I*] *the said J. P. thereupon adjudged the said C. D., for his said offence, to* [&c. set out the adjudication as in the conviction]: *and whereas the said C. D., being so convicted as aforesaid, and being required to pay the said sums, hath not paid the same or any part thereof, but therein hath made default; these are therefore to command you forthwith to make distress of the goods and chattels of the said C. D.; and if, within the space of* [see *ante*, 325] *days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one moiety of the said sum of , so forfeited as aforesaid, together with the said sum of for costs, unto A. B., who hath informed me of the said offence; and the said other moiety of the said sum of , so forfeited as aforesaid, unto the use of her Majesty* [or, "*unto the overseers of the poor of the said parish of , where the said offence was committed, for the use of the poor of the said parish,*" or, according to the statute, which enacts as to who is to have the penalty]; *rendering the overplus on demand unto the said C. D., the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if no such distress can be made, that then you certify the same unto me, to the end that such further proceedings may be had therein as to the law doth appertain. Given under my hand and seal this day of, &c.*

J. P.

Forms.

(2.) Constable's return thereto.

[*Kent.*]—*I, E. F., constable of , in the county aforesaid, do hereby certify J. P., Esquire, one of her Majesty's justices of the peace for the said county, that by virtue of this warrant I have made diligent search for the goods and chattels of the within-mentioned C. D., and that I can find no sufficient goods or chattels of the said C. D. whereon to levy the sums within mentioned. Witness my hand the day of, &c.* *E. F.*

(3.) General form of commitment for want of distress (*a*).

[*Kent.*]—*To the Constable of in the said county, and to the Keeper of the* [*house of correction*] *at in the said county.*

WHEREAS C. D., late of in the said county, [*labourer*], *was on the day of last past, duly convicted before* [*me*], *J. P., one of her Majesty's justices of the peace for the said county, for that he the said C. D.* [&c. state the offence as in the conviction], *against the form of the statute in that case made and provided; and* [*I*] *the said J. P. thereupon adjudged the said C. D., for his said offence, to* [&c. set out the adjudication as in the conviction] : *and whereas afterwards, on the day of in the year aforesaid,* [*I*] *the said J. P. issued a warrant to the constable of , commanding him to levy the said sums by distress and sale of the goods and chattels of the said C. D.; and whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress can be found whereon to levy the same: these are therefore to command you, the said constable of aforesaid, to take the said C. D. and him safely to convey to the* [*house of correction*] *at aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction to receive the said C. D. into the said house of correction, there to imprison him* [*and keep him to hard labour*] *for the space of calendar months, unless the said sums shall be sooner paid; and for your so doing this shall be your sufficient warrant. Given under my hand and seal at in the county aforesaid, this day of, &c. in the year of the reign of Queen Victoria.* *J. P.*

(4.) Award of costs and warrant of distress for.

See the forms, *ante*, 181.

Distringas. *See "Process," Vol. V.*

Divine Service. *See "Church," "Common Prayer," Vol. I.; "Public Worship," Vol. V.*

Dogs.

As to the duty on dogs, *see "Taxes," Vol. VI.*

Duty on.

So far as dogs fall under the consideration of the game laws, and as to the right to set dog spears, *see* tit. "*Game*," *Vol. II.*

Game laws.

Dog spears.

As to cruelty to dogs and animals in general, see *ante*, "*Cattle and Animals.*"

Cruelty to.

As to the stealing of dogs, *see "Larceny," Vol. III.*

Stealing of.

The law takes notice of a mastiff, hound, spaniel, and tumbler, as valuable things. (*Wright* v. *Ramscot*, 1 *Saund.* 84).

What dogs taken notice of as valuable.

With respect to the question whether dogs are personal property, *see Ireland* v *Higgins*, *Cro. Eliz.* 125. It seems clearly they are.

Other dogs are not considered in law of any intrinsic value, and at

(*a*) See further "*Commitment in Execution*," *ante, Vol. I.*

common law are not the subject of larceny. (See 4 *Bla. Com.* 236). But several statutes have been passed to protect the property in them against theft, &c. (See "*Larceny*," *Vol. III.*) And it seems an action will lie for an injury to *any* reclaimed animal. (*Com. Dig. Action sur Trover* (C)).

Mischievous dogs.

Mischievous Dogs.]—A *mastiff*, going in the street unmuzzled, from the ferocity of his nature being dangerous and cause of terror to his Majesty's subjects, seemeth to be a common nuisance, and consequently the owner may be indicted for suffering him to go at large. (1 *Russ.* 303).

And in *Smith* v. *Pelah*, (2 *Stra.* 1264), it was ruled, that if any dog has once bit a man, and the owner having *notice* thereof keeps the dog, and lets him go about or lie at his door, an action will lie against him at the suit of the person bit, though it happened by his treading on the dog's toes; for it was occasioned by his not killing the dog on the first notice, and the safety of the King's subjects ought not afterwards to be endangered. (And see *Blackman* v. *Simons*, 3 *Car. & P.* 138).

If a man knowingly keeps a dog accustomed to bite, and any person coming by chance in his way be bitten, an action lies against the owner, though he had no malice against the particular individual. (*Per* Lord *Ellenborough*, C. J., in the case of *Townsend* v. *Wathen*, 9 *East*, 280).

The harbouring a dog about one's premises, or allowing him to be or resort there, is a sufficient keeping of the dog to support this form of action. (*Per* Lord *Tenterden*, *M'Hone* v. *Wood*, 5 *C. & P.* 2).

Where the defendant's dog was reported to be mad, and the defendant tied him up, but he broke loose, and bit the plaintiff's child, who died of hydrophobia; it was held that the defendant was liable in damages to the amount of the apothecary's bill for attending the child; and Lord *Kenyon*, to prove the *scienter*, admitted evidence of reports in the neighbourhood that the dog had been bitten by a mad dog. (*Jones* v. *Perry*, 2 *Esp.* 482; differently reported, *Peake's Evid.* 5th ed. 292). The defendant was bound to destroy or effectually secure the dog.

And in *Blackman* v. *Simons*, 3 *C. & P.* 138, it seems to have been considered that in general the owner of a vicious animal, after notice of its having done an injury, is bound to secure it at all events, and is liable in damages to a party subsequently injured, if the mode he has adopted to secure it becomes ineffectual.

But if a dog accustomed to bite be let loose at night for the protection of the defendant's yard, and the injury arise from the plaintiff's incautiously going into the yard, after it has been shut up, no action will lie. (*Brock* v. *Copeland*, 1 *Esp.* 203).

And in a late case at Nisi Prius, it was considered that a person cannot recover damages for an injury received from the bite of a dog placed in a yard for the protection of outhouses, unless he had such reasonable and justifiable cause for being in the place where the dog was as might be pleaded in answer to an action of trespass; and if he had such cause, the circumstance of there being a notice on a board, in large letters, warning persons to beware of the dog, will not be an answer to an action by him for the injury, if it appear that he was not able to read. (*Sarch* v. *Blackburn*, 4 *C. & P.* 297).

If no suspicion be thrown upon the plaintiff by the defendant in such a case, it may be taken he had such cause, provided the dog is put in a place forming part of another entrance to the house of the defendant, although there may be other entrances of a more public description by which the plaintiff might have proceeded. (*Sarch* v. *Blackburn*, 4 *C. & P.* 297).

In the same case, *Tindal*, C. J., said, "I think a man has no right to place a dog so near the door of his house that any person coming to ask for money or on other business, might be bitten; and so with respect to

a footpath, though it be a private one, a man has no right to put a dog with such a length of chain and so near that path that he could bite a person going along it."

Mischievous dogs.

Where the allegation in the declaration was that the dog was accustomed to bite mankind, and that the defendant knew it, it was held by *Abbott*, C. J., that proof that the defendant had warned a person to beware of the dog lest he should be bitten, was evidence to go to the jury in support of the allegation. (*Judge* v. *Cox*, 1 *Stark.* 285; *and see* 1 *B. & Ald.* 623). Though where it was alleged that the defendant knew that the dog was accustomed to bite sheep, the Court of King's Bench held that proof that the dog had jumped at a man and chased sheep, was not evidence to support the allegation. (*Hartley* v. *Halliwell*, 2 *Stark.* 214; 1 *B. & Ald.* 620, S. C.).

So, in an action for keeping a dog which bit the plaintiff, proof that the dog was of a fierce and savage disposition, and generally tied up by the defendant, and that defendant promised to make plaintiff a pecuniary recompense after the latter had been bit by the dog, was not considered sufficient. (*Beck & Wife* v. *Dyson*, 4 *Camp.* 198).

In order to maintain an action for biting by the defendant's dog, it must be proved also that *he knew* his dog to be used to bite; but one instance is sufficient in that case. (*Anon.*, 12 *Mod.* 555; *R.* v. *Huggins*, 1 *Ld. Raym.* 1583).

If a man has a dog that *kills sheep*, this is not a public nuisance, but the owner of the dog (knowing thereof) is liable to an action; but if he is ignorant of such quality, he shall not be punished for this killing; and in an action upon the case for such killing, the plaintiff shall be required to prove in evidence that the dog had used to kill sheep. (*Anon.*, *Dyer*, 25; *Het.* 171).

And if a man keeps a dog accustomed to bite *sheep*, and he knows it, and notwithstanding he keeps the dog still, and afterwards the dog bites a *horse*, this shall be actionable, although he had been known before to bite sheep only; because the owner, after notice of the first mischief, ought to have destroyed or hindered him from doing any more hurt. (*Jenkins* v. *Turner*, 1 *Ld. Raym.* 110; *Salk.* 662, S. C.; *Bull. N. P.* 77).

Keeping noisy dogs.

Noisy Dogs.]—Generally speaking, an action will not lie for such things as merely abridge the gratification of the plaintiff in the enjoyment of his property; and where the plaintiff brought his action against the defendant for keeping his dogs so near the plaintiff's house that his family were prevented from sleeping during the night, and were much disturbed during the day, and the jury found a verdict for the defendant, though no evidence was given by him, the court refused to grant a new trial. (*Street* v. *Tugwell*, *Selw. N. P.* 1047; *see* "*Nuisance*," *Vol. V.*)

Dogs straying. Trover.

Dogs straying.]—An action of trover was brought for a pointing dog. The plaintiff proved the dog to be his property, and that it was found at the defendant's house twelve months after it was lost. The defendant said the dog strayed there casually, and demanded 20*s.* for twenty weeks' keeping before he would deliver up the dog. A verdict was given for the plaintiff, subject to the opinion of the court whether this refusal amounted to a conversion of the dog. But the counsel for the defendant declined arguing the question; and the plaintiff had judgment. (*Binstead* v. *Buck*, 2 *Bla. Rep.* 1117).

Dog-carts prohibited in the metropolitan police district.

Dog-carts.]—The 2 & 3 Vict. c. 47, s. 56, (the metropolitan police act), enacts, that after the 1st day of January, 1840, every person who within the metropolitan police district shall use any dog for the purpose of drawing, or helping to draw, any cart, carriage, truck, or barrow, shall be liable to a penalty of not more than 40*s.* for the first offence, and not more than 5*l.* for the second and any following offence.

Mad dogs.

Mad Dogs.]—And by the same statute, s. 61, "it shall be lawful for any constable belonging to the metropolitan police force to destroy any dog or other animal reasonably suspected to be in a rabid state, or which has been bitten by any dog or animal reasonably suspected to be in a rabid state; and the owner of any such dog or animal who shall permit the same to go at large after having information or reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state, shall be liable to a penalty (of) not more than 5*l*."

Dogs attending carts on turnpike roads.

Dogs attending Carts on Turnpike Roads.]—By the 4 Geo. 4, c. 94, s. 76, these must be fastened to the cart, under a penalty not exceeding 20*s*. (*See "Highway," "Turnpike," Vol. III.*)

Dogs' collars.

Dogs' Collars.]—A remark has been made by Sir *John Fielding*, in his "Observations on the Penal Laws," which ought to be repeated here. He "recommends it to all persons to put brass or steel collars on their dogs' necks, with the name and place of abode of their owners, and to fasten them with a padlock; for the stealing such collars being felony, it will facilitate the punishing of the offender; and the dog, when found, is recoverable by action."

Indictment for keeping a mastiff unmuzzled.

—— (venue) *THE jurors for our Lady the Queen upon their oath present, that C. D., late of the parish of in the county of , labourer, on the day of , in the year of the reign of our Lady the now Queen Victoria, and on divers other days and times between that day and the day of the taking of this inquisition, at the parish aforesaid, in the county aforesaid, near unto the King's common highway, there unlawfully did keep, and still doth keep, a certain large dog of a fierce and furious nature; and the said dog, on the day and year aforesaid, and on the said other days and times at the parish aforesaid, in the county aforesaid, near unto the said highway, there unlawfully did permit and suffer, and still doth permit and suffer, to go unmuzzled and at large; by reason whereof the liege subjects of our said Lady the Queen, on the day and year aforesaid, and on the said other days and times, at the parish aforesaid, in the county aforesaid, could not nor can they now go, return, pass, and labour in and through the said highway there, without great danger and hazard of being bit, maimed, and torn by the said dog, and losing their lives, to the great damage, terror, and common nuisance of all the liege subjects of our said Lady the Queen, in, by, and through the said highway there going, returning, passing, repassing, and labouring, to the evil example of all others, and against the peace of our Lady the Queen, her crown and dignity.* (See a form, "*Nuisance*," *Vol. V.*

Domesday Book, *when Evidence, see post, "Evidence," p.* 353.

Doors, *as to breaking open of, see "Warrant," Vol. VI.; "House," Vol. III.; and ante, "Distress," p.* 289.

Dower. *See "Forfeiture," Vol. III.*

Driving furiously. *"Stage Coaches," Vol. V.; "Homicide," Vol. III.*

Drowning, *Murder by. See "Homicide," Vol. III.*

Drunkenness. *See "Alehouse," Vol. I.*

Ducks. *See "Game," Vol. III.*

Duelling, *Death by. See "Homicide," Vol. III.*

Dumb Persons *may be Evidence, see "Evidence," post, p.* 353.

Duress. *See post, "Extortion."*

Dwelling-house. *See title, "House," Vol. III. As to Stealing in, see "Larceny," Vol. III.; Breaking into, see "Burglary;" Burning of, see Vol. I., "Burning."*

Dying Declarations. *See post,* 380.

Easter Offerings.

THESE, though of an ecclesiastical nature, are, when they do not exceed the yearly amount of £10, recoverable by information and conviction before two justices, under 7 & 8 Will. III. c. 6, amended by 7 & 8 Geo. IV. c. 15, and extended to the £10 by the 5 & 6 Will. 4, c. 74, s. 1.

They are expressly exempted from the operation of the tithe commutation acts. *See title "Tithes," Vol. VI.*

East India Company.

THE 1 & 2 Geo. IV. c. 61, s. 6, enacts, "That if any person shall be convicted of making a false oath, touching any of the matters directed or required by that act, (an act to regulate the appropriation of unclaimed shares of prize money, belonging to soldiers or seamen in the service of the East India Company), to be testified on oath, such persons so convicted shall be deemed guilty of perjury, and liable to be punished as persons guilty of perjury in England."

Making a false oath relative to certain East India prize money, deemed perjury.

"And if any person shall corruptly procure or suborn any other person to swear falsely in any such oath, such person being duly convicted of such procuring and suborning shall suffer such pains, &c. as persons convicted of perjury are liable to." See further as to perjury in general, *"Perjury," Vol. V.*

Persons suborning.

As to forgery on, *see "Forgery," Vol. III.*

Forgery on.

As to part of entries in books of, *see post.*

Books of.

Ecclesiastics *and* **Ecclesiastical Courts.** *See "Clergy," "Church," Vol. I. As to Proof of Proceedings in Ecclesiastical Courts, post, "Evidence."*

Egyptians.

Gypsies.

THESE are a strange kind of commonwealth among themselves, of wandering impostors and jugglers, who made their first appearance in Germany about the beginning of the sixteenth century, and have since spread themselves all over Europe and Asia. They were originally called Zinganees by the Turks, from their captain Zinganeus; who, when Sultan Selim conquered Egypt, about the year 1517, refused to submit to the Turkish yoke, and retired into the deserts, where they lived by rapine and plunder, and frequently came down into the plains of Egypt, committing great outrages in the towns upon the Nile, under the dominion of the Turks. But being at length subdued and banished from Egypt, they dispersed themselves in small parties into every country in the known world; and, as they were natives of Egypt, a country where the occult sciences, or black art, as it was called, was supposed to have arrived to great perfection, and which, in that credulous age, was in great vogue with persons of all religions and persuasions, they found the people, wherever they came, very easily imposed on. (*Mod. Univ. Hist.* vol. xliii. p. 271).

In the compass of a very few years, they gained such a number of idle proselytes, who imitated their language and complexion, and betook themselves to the same arts of chiromancy, begging, and pilfering, that they became troublesome, and even formidable, to most of the states of Europe. Hence they were expelled from France in the year 1560, and from Spain in 1591. And the government in England took the alarm much earlier; for, in 1530, they are described by the statute of the 22 Hen. VIII. c. 10, as "outlandish people, calling themselves Egyptians, using no craft nor feat of merchandize, who have come into this realm, and gone from shire to shire, and place to place, in great company, and used great, subtil, and crafty means to deceive the people; bearing them in hand, that they by palmestry could tell men's and women's fortunes; and so, many times, by craft and subtilty have deceived the people of their money, and also have committed many heinous felonies and robberies." Wherefore they are directed to avoid the realm, and not to return, under pain of imprisonment, and forfeiture of their goods and chattels: and, upon their trials for any felony which they may have committed, they shall not be entitled to a jury *de medietate linguæ.* And afterwards it was enacted by stat. 1 & 2 P. & M. c. 4, and 5 Eliz. c. 20, that if any such persons shall be imported into this kingdom, the importer shall forfeit 40*l.* And if the Egyptians themselves remain one month in this kingdom, or if any person being fourteen years old, whether a natural born subject or stranger, which hath been seen or found in the fellowship of such Egyptians, or which hath disguised him or herself like them, shall remain in the same one month at one or several times, it is felony without benefit of clergy. And Sir Matthew Hale informs us, that at one Suffolk assizes no less than thirteen gypsies were executed upon these statutes, a few years before the Restoration. But, to the honour of our national humanity, there are no instances more modern than this, of carrying these laws into execution. (4 *Black. Com.* 166). And by stat. 23 Geo. III. c. 51, the said stat. 5 Eliz. c. 20, is repealed.

Description of, by 22 Hen. 8, c. 10;

1 & 2 P. & M. c. 4, 5 Eliz c 20.

5 Eliz. c. 20, repealed.

And now, by stat. 1 Geo. IV. c. 116, after reciting that, "by the stat. 1 & 2 P. & M. c. 4, it is enacted, that if any of the persons called Egyptians which shall be transported and conveyed into this realm of England or Wales do continue and remain within the same by the space of one month, that then he or they so offending shall, by virtue of this act, be deemed or judged a felon or felons, and shall therefore suffer pains of death, loss of lands and goods, as in cases of felony, by the order

1 Geo 4, c. 116, repeals so much of 1 & 2 P & M c. 4, as inflicts capital punishment.

of the common law of this realm, and shall, upon the trial of them or any of them therein, so tried in the county, and by the inhabitants of the county or place where they or he shall be apprehended or taken, and not *per medietate linguæ*, and shall lose the benefit and privilege of sanctuary and clergy," it is enacted, "that so much of the said act as is hereinbefore recited shall be, and the same is hereby repealed."

Error.

Although there is no law expressly putting down gipsies, they frequently come within the meaning of the acts against vagrancy, and which see, tit. "*Vagrants*," *Vol. IV.*

Vagrants.

Election. *See "Bribery," Vol. I.; "Parliament," Vol. V. As to Evidence of Poll Books, see post, "Evidence," p.* 353.

Embezzlement. *See "Cheat," Vol. I.; "Larceny," Vol. III.*

Embracery. *See "Maintenance," Vol. V.*

Emigration.

THE statute 5 & 6 Will. IV. c. 53, regulates the number of passengers and the quantity of provisions &c. to be taken out by ships carrying emigrants or other passengers to any foreign place out of Europe not within the straits of Gibraltar. The provisions of that act are extended to the British colonies in the West Indies, by the 3 & 4 Vict. c. 21. *See tit.* "*Ships*," *Vol. V.*

Engines, *Destroying of. See "Mines," "Manufactures," "Malicious Injuries to Property," Vol. V.*

Engrossing. *See "Forestalling," Vol. III.*

Entry, Forcible. *See "Forcible Entry," Vol. III.*

Error.

See "*Indictment*," *Vol. III.*; and see in general 1 *Chit. C. L.* 747.

THE statute 11 Geo. 4 & 1 Will. 4, c. 70, s. 8, for the return before ten judges in the Exchequer Chamber, of writs of error, upon judgments given in the King's Bench, Common Pleas and Exchequer, extends to a judgment given against a defendant on an indictment in the King's Bench. (*Rex* v. *Wright*, 1 *Ad. & El.* 434).

1. *Escape by Party himself.*

Escape.

See also "*Rescue*," "*Prison-Breaking*," *Vol. V.*

THIS is to be understood of escapes in *criminal* cases; and not in *civil* cases, as for debt, or the like.

Escape, what.

An escape is, where one that is arrested gaineth his liberty before he is delivered by the course of law. (*Terms de la Ley*).

Several kinds thereof.

Escapes are of three kinds.—1. By a person who hath the offender in his custody; this is properly called an *escape*.—2. Caused by a stranger; this is commonly called a *rescue*.—3. By the party himself; either without force, which is simply an escape, or with force, which is *prison-breaking*. *Rescue* and *Prison-breaking* are treated of under their respective titles: and this title treats only of *escapes* properly so called. Concerning which we will treat in the following order:

I. *Escape by the Party himself*, 338.
[13 Geo. III. c. 31; 44 Geo. III. c. 92; 45 Geo. III. c. 92; 54 Geo. III. c. 186.]

II. *Escape suffered by a Private Person*, 339.

III. *Escape suffered by an Officer*, 339.

IV. *What is a voluntary, and what a negligent, Escape*, 339.

V. *Concerning the retaking of a Person escaped*, 341.

VI. *Indictment for an Escape*, 342.

VII. *Evidence, Trial, and Conviction for*, 342.

VIII. *Punishment of*, 343.
[37 Geo. III. c. 140; 52 Geo. III. c. 156; 9 Geo. IV. c. 6.]

IX. *Aiding in attempting to escape*, 345.
[16 Geo. II. c. 31; 4 Geo. IV. c. 64.]

X. *Forms*, 346.

I. Escape by the Party himself.

Escape by party himself.

As all persons are bound to submit themselves to the judgment of the law, and to be ready to be justified by it, whoever in any case refuses to undergo that imprisonment which the law thinks fit to put upon him, and frees himself from it by any artifice before such time as he is delivered by due course of law, is guilty of a high contempt, punishable with fine and imprisonment. (2 *Haw.* c. 17, s. 5; 4 *Blac. Com.* 129).

But escape, committed by the party himself, belongs more properly to the title "*Prison Breaking*," *Vol. V.*

Persons escaping from G. B. to Ireland, or from Ireland to G. B., to be apprehended and brought back.

By stat. 44 Geo. III. c. 92, s. 3, offenders against whom any warrant shall be issued, escaping from Ireland into England, or Scotland, may be apprehended by an indorsed warrant, and conveyed to Ireland; and the fourth section of the act makes the same provision as to offenders escaping from England or Scotland into Ireland, being apprehended and conveyed back again to England or Scotland.

The apprehension of persons escaping from England into Scotland, and from Scotland into England, is provided for by stat. 13 Geo. III. c. 31. (4.) *What is an Escape, &c.*

And as to admitting persons apprehended in England, Scotland, and Ireland, to bail, for bailable offences, see stat. 45 Geo. III. c. 92, and 54 Geo. III. c. 186; which latter stat. s. 2 enacts, that all warrants issued in England, Scotland, or Ireland, respectively may and shall be indorsed and executed, and enforced and acted upon, in any part of the United Kingdom, in like manner as is directed by stat. 13 Geo. III. c. 31, in relation to warrants issued or granted in England and Scotland respectively, as fully as if all the provisions of the said act were made part of this act, as to every part of the United Kingdom, and as to all justices of the peace, sheriff's officers, constables, or other officer or officers of the peace in Ireland, as well as in England and Scotland respectively.

See also *post*, "*Warrant*," *Vol. VI.*

II. Escape suffered by a private Person.

It seems to be a good general rule, that wherever any person hath another lawfully in his custody, whether upon an arrest made by himself or another, he is guilty of an escape, if he suffer him to go at large before he hath discharged himself of him, by delivering over to some other who by law ought to have the custody of him. (2 *Hawk.* c. 20, s. 1.) Escape by a private person.

And the law is generally the same, in relation to escapes suffered by private persons, as by officers. (*Id.*)

As to escapes procured by third persons, *see post*, "*Rescue*," *Vol. V.*

III. Escape suffered by an Officer.

Whenever an officer, having a party lawfully in his custody on a charge of felony, *voluntarily* permits him to escape, the officer is involved in the legal guilt of the crime charged on his prisoner. (2 *Hawk.* c. 19, s. 40). Escape by Offic

Where he *negligently* permits a prisoner to escape, he is guilty of a misdemeanor; and he is guilty in this degree if a prisoner in his charge commits suicide. (*Dalt*, J., c. 159).

It is laid down, that who ever, *de facto*, occupies the office of a gaoler, is liable to answer for a *negligent escape*, and that it is no way material whether his title to the office be legal or not. (2 *Hawk.* c. 19, s. 28). It appears to have been holden, that it is an escape in the constable to discharge a person committed to his custody by a watchman, as a loose and disorderly woman, and a street-walker, although no positive charge was made. (*Rex* v. *Bootie*, 2 *Burr.* 864).

As to what is an escape, and what a negligent, and what an involuntary one, *see infra.*

IV. What is an Escape, and what a negligent or voluntary one.

In order to make an escape there must be an *actual arrest;* and therefore if an officer, having a warrant to arrest a man, see him shut up in a house, and challenge him as his prisoner, but never actually have him in his custody, and the party get free, the officer cannot be charged with an What is an escape.

4. *What is an Escape, &c.*

escape. (2 *Hawk.* c. 19, s. 1; 1 *Hale*, 594). As to what is an arrest, see "*Arrest*," *Vol. I.*

Must be a previous arrest. And justifiable.

The arrest must be also justifiable; for, if it be either for a supposed crime, where no such crime was committed, and the party neither indicted nor appealed, or for such a slight suspicion of an actual crime, and by such an irregular mittimus as will neither justify the arrest nor imprisonment, the officer is not guilty of an escape, by suffering the prisoner to go at large. (2 *Hawk.* c. 19, s. 2).

And for a criminal offence.

And as the imprisonment must be justifiable, so it must be also for *a criminal offence.* (*Id.* s. 3).

And not detained only for fee.

The imprisonment must also be *continuing* at the time of the escape; and its continuance must be grounded on that satisfaction which the public justice demands for the crime committed. So that if a prisoner be acquitted, and detained only for his fees, it will not be criminal to suffer him to escape, though the judgment were that *he be discharged, paying his fees;* he being detained, not as a criminal, but only as a debtor: but if a person convicted of a crime be condemned to imprisonment for a certain time, and also "until he pays his fees," and he escape after such time is elapsed, without paying them, perhaps such escape may be criminal, for it was part of the punishment that the imprisonment be continued till the fees should be paid (*a*). (2 *Hawk.* c. 19, s. 4; 1 *Russ. C. & M.* 531).

Too much liberty, an escape.

Also, it is an escape in some cases to suffer a prisoner to have greater liberty than by the law he ought to have; as to admit a person to bail, who by law ought not to be bailed, but to be kept in close custody. (2 *Hawk.* c 19, s. 5).

Losing sight, an escape.

So if a gaoler or other officer shall license his prisoner to go abroad for a time, and to come again, this is an escape, even though the prisoner return again. (*Dalt.* c. 159).

If the gaoler so closely pursue the prisoner who flies from him, that he retakes him without losing sight of him, the law looks on the prisoner so far in his power all the time, as not to adjudge such a flight to amount at all to an escape: but if the gaoler once lose sight of the prisoner, and afterwards retake him, he seems in strictness to be guilty of an escape. (2 *Hawk.* c. 19, s. 6).

But it must be by a known officer of the law. T. Hill, a yeoman wardour of the Tower, and Dod, the gentleman gaoler there, were indicted for the negligent escape of Colonel Parker, committed to the Tower for high treason. Lord Lucas, the constable of the Tower, had committed the colonel to the care of the defendants, to be kept in the house of the defendant Hill. The judges present (O. B., January, 1694) were of opinion, that the defendants were not such officers as the law took notice of, and therefore could not be guilty of a negligent escape. It was merely a breach of trust to Lord Lucas, their master.

Upon the same principle, S. Stick, a wardour of the Tower, who was indicted at the same sessions for the negligent escape of Lord Clancarty, was acquitted.

Voluntary escape, what.

Wherever an officer, who hath the custody of a prisoner, charged with and guilty of a capital offence, doth knowingly give him his liberty, with an intent to save him from his trial or execution, this is a *voluntary* escape. (2 *Hawk.* c. 19, s. 10).

Negligent escape, what.

A *negligent* escape is, when the party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is

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(*a*) By 55 Geo. III. c. 59, fees payable by prisoners are abolished. See "*Gaols*," *Vol. III.*

not freshly pursued and taken again before he hath lost the sight of him. (*Dalt.* c. 159).

(5.) *Retaking after.*

If a constable or other officer shall voluntarily suffer a thief, being in his custody, to go into the water to drown himself, this escape is felony in the constable, and the drowning is felony in the thief: otherwise, if the thief shall suddenly, without the assent of the constable, kill, hang, or drown himself, this is but a negligent escape in the constable. (*Id.*)

Suffering a prisoner to kill himself.

If a prisoner for felony break the gaol, this seems to be a negligent escape in the gaoler, because there wanted either that due strength in the gaol, that should have secured him, or that due vigilance in the gaoler or his officers to have prevented it; and therefore it is lawful for the gaoler to hamper them with irons to prevent their escape; for if gaolers might not be punished for this as a negligent escape, they would be careless either to secure their prisoners, or to retake them that escape. (1 *Hale*, 601).

Prisoner breaking gaol.

V. Retaking a Person escaped.

If an officer hath arrested a man by virtue of a warrant, and then taketh his promise that he will come again, and so letteth him go, the officer cannot, after arrest, take him again by force of his former warrant, for that this was by the consent of the officer. But if he return, and put himself again under the custody of the officer, it seems that it may be properly argued that the officer may lawfully detain him, and bring him before the justice, in pursuance of the warrant. (*Dalt.* c. 169; 2 *Hawk.* c. 13, s. 9).

Let go voluntarily, cannot be retaken.

But if the party arrested had escaped of his own wrong, without the consent of the officer, now, upon fresh suit, the officer may take him again and again so often as he escapeth, although he were out of view, or that he shall fly into another town or county, and bring him before the justice upon whose warrant he was first arrested. (*Dalt.* c. 169, p. 405).

Fresh suit.

And it is said generally in some books, that an officer who hath negligently suffered a prisoner to escape may retake him wherever he finds him, without mentioning any fresh pursuit: and indeed since the liberty gained by the prisoner is wholly owing to his own wrong, there seems to be no reason he should take any manner of advantage from it. (2 *Hawk.* c. 19, s. 12).

And wherever a person is lawfully arrested for any cause, and afterwards escapes, and shelters himself in a house, the doors may be broken open to take him, on a refusal of admittance. (2 *Hawk.* c. 14, s. 9).

Breaking open doors to retake.

It is perhaps the better opinion, that wherever a prisoner, by the negligence of his keeper, gets so far out of his power that the keeper loses sight of him, the keeper is punishable for the escape, notwithstanding he took him immediately after: and it is clear that he cannot excuse himself from an escape by killing a prisoner in the pursuit, though he could not possibly retake him; but must in such case be content to submit to such punishment as his negligence shall appear to deserve. (2 *Hawk.* c. 19, s. 13).

Retaking excuseth not the escape.

In the case of *Ryland* v. *Lavender*, 2 *Bing.* 65, 9 *Moore*, 71, *S. C.*, the defendant, as gaoler, covenanted with the sheriff, among other things, to attend the quarter sessions, and to remove prisoners, under writs of *habeas corpus*, without permitting them to escape. The defendant being engaged at the quarter sessions, the sheriff, upon a writ of *habeas corpus* for the removal of a prisoner, directed his warrant to the defendant, and "W. W., by me (the sheriff) for this time only thereto specially

(7.) *Evidence, Trial, &c.*

appointed." W. W., who was the defendant's turnkey, proceeded with the prisoner towards the place of destination. The prisoner having escaped, the court of C. P. held that the sheriff having specially directed the warrant to W. W., the defendant was not liable upon his covenant.

VI. Indictment for an Escape.

Indictment.

The indictment for an escape, whether negligent or voluntary, must shew that the party was actually in the defendant's custody for some crime, or upon some commitment on suspicion; and it is not sufficient to say that he was in the defendant's custody, *and* charged with such a crime; for that is no allegation that he was in custody upon that charge: 2 *Hawk. P. C.* c. 97, s. 4. It should shew that the prisoner went at large, and the time when the offence was committed for which the party was in custody, not only that it may appear that it was prior to the escape, but also that it was subsequent to the last general pardon. An indictment for a voluntary escape must allege that the defendant feloniously and voluntarily permitted the prisoner to go at large, and must also show the species of crime for which the party was imprisoned; for it will not be sufficient to say, in general, that he was in custody for felony, &c. It is questionable, however, whether such certainty, as to the nature of the crime, be necessary in an indictment for a negligent escape, as it is not, in such a case, material whether the person who escaped were guilty or not. (1 *Russ.* 374, *Chit. Coll. Stat. tit. Escape*).

VII. Evidence, Trial, and Conviction for an Escape.

Gaoler not producing him, a conviction.

If the prisoner be of record in the court, and the gaoler being called cannot give an account where he is, this is a conviction of an escape; but seems not a conviction of a voluntary escape, unless the gaoler confesseth it: And the gaoler may be fined in such a case. (1 *Hale*, 603).

Felony to be tried before the escape.

And it seems to be clear, that a keeper who voluntarily suffers another to escape who was in his custody for felony, cannot be arraigned for such escape as for felony until the principal be attainted, for that the felony of the prisoner shall not be tried between the king and the keeper, because the prisoner is a stranger thereunto; yet he may be indicted and tried for it as a misprision before the attainder of the principal offender. (2 *Hawk.* c. 19, s. 26; 2 *Inst.* 591, 592).

Method of trial and conviction of offenders making escapes, &c.

By the 4 Geo. IV. c. 64, s. 44. "And, to the intent that prosecutions for escapes, breaches of prison, and rescues, may be carried on with as little trouble and expense as is possible, be it enacted, that any offender escaping, breaking prison, or being rescued therefrom, may be tried either in the jurisdiction where the offence was committed, or in that where he or she shall be apprehended and retaken; and in case of any prosecution for any such escape, attempt to escape, breach of prison, or rescue, either against the offender escaping or attempting to escape, or having broken prison, or having been rescued, or against any other person or persons concerned therein, or aiding, abetting, or assisting the same, a certificate given by the clerk of assize, or other clerk of the court in which such offender shall have been convicted, shall, together with due proof of the identity of the person, be sufficient evidence to the court and jury of the nature and fact of the conviction, and of the species and period of confinement to which such person was sentenced."

Evidence.

The certificate to make it evidence under this enactment must set forth the effect and substance of the conviction. (*Rex* v. *Watson*, *R. & R.* 468).

Sect. 48. Gaol, though locally situate out of the county, &c. shall be deemed part of the county, &c., and subject to the jurisdiction of the justices of the county, &c. (8.) *Punishment.*

Sect. 96. "Nothing in this act contained shall extend to the royal hospital of Bethlehem and prison of Bridewell, nor to the King's Bench or Fleet Prison, or to the prison of the Marshalsea, or Palace Courts, the general Penitentiary at Milbank (*a*), nor to the Penitentiary at Gloucester; nor to any ships or vessels provided in any port or navigable river for the reception and employment of convicts sentenced to transportation; nor to exempt any such convicts from any punishment or discipline to which they were liable by law before the passing of this act." Not to extend to certain prisons, &c.

VIII. Punishment of an Escape.

If a felon escape before arrest, it is not punishable in him as felony; but for the flight he forfeits his goods when presented. (*Hale's Sum.* 111). Escape before arrest

If a *private person* arrest a felon, and he escape by force from him, the township shall be amerced; but it seems it excuseth the party because he cannot raise power to assist him: but if a *constable or other officer* hath the custody of a prisoner, bringing him to the gaol, it seems that a simple escape by the rescue of the prisoner himself doth not wholly excuse him, because he may take sufficient strength to his assistance. (1 *Hale*, 601). Escape by private person.

Wherever a *person* is found guilty upon an indictment or presentment of a *negligent* escape of a criminal actually in his custody, he is punishable by fine and imprisonment, according to the quality of the offence (2 *Hawk.* c. 19, s. 31; c. 20, s. 6; 1 *Hale*, 600, 604).

And it seems to be the better opinion, that the sheriff is as much liable to answer for a negligent escape suffered by his bailiff as if he had actually suffered it himself, and that the court may charge either the sheriff or bailiff for such an escape; and if a deputy gaoler be not sufficient to answer a negligent escape, his principal must answer for him. (2 *Hawk.* c. 19, s. 29; *Rex* v. *Fell*, 1 *Ld. Raym.* 424). Escape by officer.

Mr. Hawkins, although he is one of the most accurate of all writers, yet hath inserted in this place certain penalties for escapes which were expired above two hundred years before. (2 *Hawk.* c. 19, s. 34, 35. *Vide* the edition by Mr. Curwood).

It seems to be generally agreed, that a voluntary escape suffered by an officer amounts to the same kind of crime, and is punishable in the same degree, as the offence of which the party was guilty, and for which he was in custody; whether it be treason, felony, or trespass, (2 *Hawk.* c. 19, s. 22): if the cause be expressed in the commitment. (2 *Inst.* 52. *See* "*Commitment*," *Vol. I.*)

But yet a voluntary escape is no felony, if the act done were not felony at the time of the escape made, as in case of a mortal wound given, and the party not dying till after the escape; but the officer may be fined to the value of his goods. (*Dalt.* c. 159).

Also a voluntary escape suffered by one who wrongfully takes upon him the keeping of a gaol, seems to be punishable in the same manner as if he was never so rightfully entitled to such custody; for that the crime is in both cases of the same ill consequence to the public; and there seems to be no reason that a wrongful officer should have greater favour than a rightful, and that for no other reason but because he is a wrongful one. (2 *Hawk.* c. 19, s. 23).

(*a*) As to escapes from the Penitentiary at Milbank, see 7 Will. IV. & 1 Vict. c. 91, s. 1.

(8.) *Punishment.*

But it seemeth to be clear that no one is punishable as for felony for the voluntary escape of a felon, but the person only who is actually guilty of it; and therefore that the principal gaoler is only fineable for a voluntary escape suffered by his deputy; for that no one shall suffer capitally for the crime of another. (*Id.* s. 27).

And therefore, although in all civil causes the sheriff is to be responsible, or the gaoler, at election, yet if the gaoler do voluntarily suffer a felon in his custody to escape, this, inasmuch as it reacheth to life, is felony only in the gaoler that was immediately trusted with the custody, and not in the sheriff. (1 *Hale*, 597).

For the escape must be voluntarily permitted in him that permitted it, which could not be in the high sheriff, though it were such in the gaoler, for he was not privy to it, and therefore could not do it feloniously; but it was a negligent escape in him, in trusting such a person with the custody of his prisoners that would be false to his trust, and therefore the sheriff shall pay, but not corporally suffer for the miscarriage of his gaoler. (1 *Hale*, 597, 598).

But although the felony for which a man is committed be not within clergy, yet the person who voluntarily suffers him to escape shall have the benefit of the clergy. (1 *Hale*, 599. *See now ante*, "*Clergy, Benefit of*," *Vol. I.*)

Escape of offenders sentenced by courts-martial, and conditionally pardoned.

The *Mutiny Act* in general enacts, that if any offender, under sentence of death by a court-martial, shall obtain a conditional pardon, [*viz.* on transportation], all the laws in force touching the escape of felons under sentence of death shall apply to such offender, and to all persons aiding, abetting, or assisting, in any escape or intended escape of any such offender, or contriving any such escape, from the time when an order [for his transportation] shall be made by a justice or baron, and during all the proceedings had for the purposes mentioned in the act. (See "*Military Law*," *Vol. V.*, 6 Geo. IV. c. 5, s. 13; 6 Geo. IV. c. 6, s. 14).

A former statute, 37 Geo. III. c. 140, s. 6, contains a similar provision with respect to offenders under sentence of death by a naval court-martial, and allowed the benefit of a conditional pardon.

Aiding escape of prisoners of war.

The 52 Geo. III. c. 156, provides against the aiding of the escape of prisoners of war, and enacts, that "every person who shall knowingly and wilfully aid or assist any alien enemy of H. M., being a prisoner of war in H. M.'s dominions, whether such prisoner shall be confined as a prisoner of war in any prison or other place of confinement, or shall be suffered to be at large in H. M.'s dominions, or any part thereof, on his parole, to escape from such prison or other place of confinement, or from H. M.'s dominions, if at large upon parole," shall, upon conviction, be adjudged guilty of felony, and be liable to be transported for life, or for fourteen or seven years.

Sect. 2. Every person who shall knowingly and wilfully aid or assist any such prisoner at large on parole in quitting any part of H. M.'s dominions, where he may be on his parole, although he shall not aid or assist such person in quitting the coast of any part of H. M.'s dominions, shall be deemed guilty of aiding the escape of such person within the act. There is a further provision as to assisting such prisoners in their escape after they had got upon the high seas.

Sect 3. "If any person or persons owing allegiance to H. M., after any such prisoner as aforesaid hath quitted the coast of any part of H. M.'s dominions in such his escape as aforesaid, shall, knowingly and wilfully, upon the high seas, aid or assist such prisoner in his escape to or towards any other dominions or place, such person shall also be adjudged guilty of felony, and be liable to be transported as aforesaid." It is also provided, that offences committed upon the high seas, and not within the body of any county, may be tried in any county within the realm.

By sect. 4, the act is not to prevent offenders from being prosecuted as they might have been if the act had not been passed; but no person prosecuted otherwise than under the provisions of the act is to be liable to be prosecuted for the same offence under the act; and no person prosecuted under the act is, for the same offence, to be otherwise prosecuted.

(9.) *Aiding in.*

The offence of aiding a prisoner of war to escape is not complete if such prisoner is acting in concert with those under whose charge he is merely to detect the defendant, who was supposed to have assisted in the escape of other prisoners, and such prisoner having no intention to escape. (*Rex* v. *Martin*, *Russ. & R. C. C.* 196).

Rescue and prison-breach.

As to the punishment of persons guilty of rescuing and breaking prisons, *see post*, "*Rescue, Prison-breach*," *Vol. V.*

Returning from transportation.

As to the offence and punishment relating to escaping after transportation, *see post*, "*Transportation*," *Vol. VI.*

IX. Aiding in attempting to Escape.

Aiding a prisoner in an attempt to escape from gaol.

The mere aiding an attempt of persons confined to make an escape, though no escape should ensue, is made highly penal by stat. 16 Geo. II. c. 31, s. 1 (*a*), which enacts, "that if any person shall assist any prisoner to *attempt* his escape from any gaol, though no escape be actually made, if such prisoner were then attainted or convicted of treason, or felony, (except petty larceny), or lawfully committed to or detained in any gaol for treason or felony, (except petty larceny), expressed in the warrant of commitment or detainer (*b*), he shall be guilty of felony, and be transported for seven years: and if such prisoner were then convicted of, committed to, or detained in gaol for petty larceny, or any other crime not being treason or felony, expressed in the warrant of commitment or detainer, or was then in gaol upon any process for debt, damages, costs, or sum of money, amounting to 100*l.*, he shall be guilty of a misdemeanor and be liable to fine and imprisonment."

Assisting escape from a constable, or from any boat carrying felons for transportation.

Sect. 3. "If any person shall assist any prisoner to attempt to escape from any constable, or other officer or person who shall have the lawful charge of him in order to carry him to gaol, by virtue of a warrant of commitment for treason or felony, (except petty larceny), expressed (*b*) on such warrant; or if any person shall assist any felon to attempt his escape from on board any boat, ship, or vessel, carrying felons for transportation, or from the contractor for the transportation of such felons, or his agents, or any other person to whom such felon shall have been lawfully delivered in order for transportation, he shall be guilty of felony, and be transported for seven years."

All prosecutions on this act to be commenced within a year after the offence committed.

Stat. 16 Geo 2, c. 31, does not extend to cases where an actual escape is made.

The stat. 16 Geo. II. c. 31, does not extend to cases where an *actual escape* is made, but must be confined to cases of *an attempt*, without effecting the escape itself. Mr. J. Buller, in delivering the opinion of the judges (O. B. June, 1726), observed, "The statute purports to be made for the further punishing of those persons who shall aid and assist persons attempting to escape, and makes the offence felony: it creates

(*a*) This act is not actually repealed by the 4 Geo. IV. c. 64, *infra*; but its provisions are thereby, in many respects, altered

(*b*) This has been held to mean "*clearly and plainly expressed*," so that a case where the commitment is on suspicion only, is not within this act. *Walker's case*, 1 *Leach*, 97; *Greenuff's case*, 1 *Leach*, 363; and *Gibbon's case*, 1 *Leach*, 98, note (*a*), *S. P.*

(10.) *Forms.*

a new felony; but the offence of assisting a felon in making an actual escape was felony before, and therefore does not seem to fall within the view or intention of the legislature when they made this statute." (*Rex* v. *Tilley and others, O. B. April Sess.* 1795; 2 *Leach*, 662; *see also Rex* v. *Burridge*, 3 *P. Wms.* 439; 1 *Hale*, 621; *Rex* v. *Young and Chissell, Winchester Lent Ass.* 1801, *cor. Le Blanc, J. Burn, J.* 24 *ed.* 935).

It is a misdemeanor, indictable at common law, to aid a person to escape from custody, though he be confined under the remand of the commissioners for the relief of insolvent debtors, and not on any criminal charge. (*Reg.* v. *Allan*, 5 *Jur.* 296, *N. P. C.*)

Delivering instruments is within the act, though the prisoner has been pardoned of the offences of which he has been convicted, on condition of transportation. (*Rex* v. *Shaw, R. & R. C. C.* 526).

Conveying vizors &c into prisons to assist prisoners to escape.

The stat. 4 Geo. IV. c. 64, s. 43, enacts, that "If any person shall convey or cause to be conveyed into any prison to which this act shall extend, ("*Gaols*," *Vol. III.*), any mask, vizor, or other disguise, or any instrument or arms proper to facilitate the escape of any prisoners, and the same shall deliver, or cause to be delivered, to any prisoner in such prison, or to any other person there, for the use of any such prisoner, without the consent or privity of the keeper of such prison, every such person shall be deemed to have delivered such vizor or disguise, instrument or arms, with intent to aid and assist such prisoner to escape or attempt to escape; and if any person shall, by any means whatever, aid and assist any prisoner to escape, or in attempting to escape, from any prison, every person so offending, whether an escape be actually made or not, shall be guilty of felony, and being convicted thereof, shall be transported beyond the seas, for any term not exceeding 14 years." See a similar provision, stat. 10 Geo. II. c. 31, s. 2. See the 44th section of the 4 Geo. IV. c. 64, as to the evidence and the trial and conviction of offenders. (*Ante*, 342).

Assisting prisoners to escape.

X. Forms.

(1.) Warrant to apprehend a person for escaping (*a*).

County of / *to wit.* } *To the Constable of the parish of , in the said county of*

Forasmuch as J. H., keeper of the gaol (or house of correction) at , in the county aforesaid, hath this day made information and complaint before me, Sir G. C., bart., one of her Majesty's justices of the peace acting in and for the said county of , that A. O. hath unlawfully and wilfully escaped from the said gaol (or house of correction), and from and out of the custody of him the said J. H., the keeper thereof, before the expiration of a certain term for which he the said A. O. was ordered to be imprisoned [and kept to hard labour] therein. These are therefore to command you the said constable forthwith to apprehend and bring before me, or some other of her Majesty's justices of the peace for the said county, the body of the said A. O., to answer unto the said complaint, and to be farther dealt with according to law. Herein fail you not. Given under my hand and seal this day of one thousand eight hundred and .

G. C. (*L. S.*)

(2.) Commitment of a constable, for a negligent escape of a prisoner.

——. (The county wherein the commitment is made). *J. P. esquire, one of her Majesty's justices of the peace for the said county, to the constable of , in the said county, and to the keeper of the common gaol at , in the said county.*

These are to command you the said constable, in her Majesty's name, forthwith

(*a*) *See* 4 *Chit. C. L.* 78.

(10.) *Forms.*

to convey and deliver into the custody of the said keeper of the said common gaol the body of C. D., charged this day before me the said justice, on the oath of A. B. of , and others, for that he the said C. D. [state the offence thus] :

On the day of in the year of our Lord at the parish of in the said county, having one C. D. in his custody, under and by virtue of a warrant of one of her Majesty's justices of the peace, on suspicion of having feloniously, &c. [as in the warrant], *did unlawfully and negligently permit the said C. D. to escape. And you the said keeper, &c.* [as usual, to the end thus] :

And you the said keeper are hereby required to receive the said C. D. into your custody in the same [*common gaol*], *and him there safely to keep until he shall be thence delivered by the course of law. Herein fail you not. Given under my hand and seal the day of , in the year of our Lord .*

J. P.

(3.) Indictment against a constable for a negligent escape (a).

——. (venue). *The jurors for our Lady the Queen upon their oath present, that on the day of in the year of the reign of our Lady the now Queen Victoria, at the parish of in the county of , one A. I., of came before J. P., esquire, then and yet one of the justices of our said Lady the Queen, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed; and the said A. I. did, then and there, on his oath before the same justice, charge, accuse, and give information against one A. O. of for a certain misdemeanor, in taking fish out of the pond of , at , in the said county,* [or as the offence shall be]: *Whereupon he the said J. P., the justice aforesaid, did then and there, to wit, at aforesaid, in the county aforesaid, make a certain warrant, under his hand and seal, in due form of law, directed to the constable of aforesaid, in the county aforesaid, thereby requiring him the said constable to take the body of the said A. O., and bring him before the said J. P., the justice aforesaid, to answer to such matters and things as should be alleged against him, touching the said misdemeanor; which said warrant afterwards, to wit, on the same day and year aforesaid, at aforesaid, in the county aforesaid, was delivered to one A. C., then being constable of aforesaid in due form of law to be executed; by virtue of which said warrant the said A. C. afterwards, to wit, on the day and year aforesaid, at (venue) aforesaid, in the said county, did take and arrest the body of the said A. O., and him the said A. O. in his custody for the cause aforesaid had* (a). *Nevertheless, the said A. C. late of the borough aforesaid, in the county aforesaid, constable as aforesaid of, &c. afterwards, to wit, on the day and year aforesaid, the duty of his office in that respect not regarding, at the parish aforesaid, in the county aforesaid, unlawfully and negligently did permit the said A. O. to escape and go at large out of the custody of the said A. C.; to the great hindrance of justice, in contempt of our said Lady the Queen and of her laws, and against the peace of our Lady the Queen, her crown and dignity.*

(4.) Indictment against a gaoler for a voluntary escape (a).

——. (venue] *The jurors for our Lady the Queen upon their oath present, that heretofore, to wit,* [*at the general quarter sessions of the peace holden at* here state the record of the conviction of the party who escaped, in the past tense ; and then as follows :] *as by the record thereof more fully and at large appears; which said judgment still remains in full force and effect, and not in the least reversed or made void. And the jurors first aforesaid upon their oath aforesaid do further present, that afterwards, to wit, at the said general quarter sessions of the peace above mentioned, he the said C. D. was then and there committed to the care and custody of E. F., he the said E. F. then and still being keeper of the common gaol in and for the said county of , there to be kept and imprisoned in the gaol aforesaid, according to and in pursuance of the judgment and sentence aforesaid; and the said E. F. him the said C. D. then and there had in the custody of him the said J. S. for the cause aforesaid, in the gaol aforesaid.* And the jurors first aforesaid, upon their oath aforesaid, do further present, that the said E. F., late of afterwards, and before the expiration of the six calendar months for which the said C. D. was so ordered to be imprisoned as aforesaid, and whilst the said C. D. was so in the custody of the said E. F. as such keeper of the said common gaol*

(a) *See* another Form. *Arch. C. L. by Jervis.*

(10.) *Forms.* *as aforesaid, to wit, on at aforesaid, feloniously,* [if the offence for which C. D. was convicted were a felony], *unlawfully, voluntarily, and contemptuously, did permit and suffer the said C. D. to escape, and go at large whithersoever he would, whereby the said C. D. did then and there escape out of the said prison, and go at large whithersoever he would, to the great hindrance of justice: in contempt of our said Lady the Queen and her laws, and against the peace of our said Lady the Queen, her crown and dignity.*

(5.) Indictment against the turnkey of a gaol for a misdemeanor, in permitting a person committed on a warrant for a misdemeanor to escape.

——. (venue) *The jurors for our Lady the Queen upon their oath present, that one W. D., esq, on the day of in the year of the reign of our Lady the now Queen Victoria, then being one of the justices of our Lady the Queen assigned to keep the peace in and for the county of in due form of law did make his warrant of commitment under his hand and seal, to wit, at bearing date the same day and year aforesaid, directed to the keeper of the common gaol at in and for the said county of by which said warrant of commitment the said keeper was required to receive, &c.* [here set forth the mittimus] *as by the same warrant more fully appears, by virtue of which said warrant of commitment, afterwards, to wit, on the said, &c., at, &c., G. H., then being keeper of the said common gaol of the said county of at aforesaid, did receive the said O. O. into his custody in the said common gaol there situate. And the jurors, &c., that D. M., late of, &c., labourer, well knowing the premises, afterwards, and whilst the said O. O. was a prisoner as aforesaid, for the cause aforesaid, to wit, on, &c., with force and arms, at, &c., unlawfully, voluntarily, and unjustly did unlock and open the door of a certain yard wherein the said O. O. was then confined within the said prison, as such prisoner as aforesaid, and did permit him, the said O O., to go out at a certain back door of, and belonging to, the said gaol, and over a certain wall surrounding and enclosing the same, and to go at large out of the said prison wheresoever he would, he the said D. M. then and there having the custody and keeping of the keys of and belonging to the said prison, whereby the said O. O. did then and there escape out of the said prison, and go at large whithersoever he would. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said D. M. then and there, in manner and form aforesaid, was aiding and assisting the said O O. to make his escape from and out of the said prison, to the great hindrance of justice, in contempt, &c.* [Conclude as in last form.]

Second count.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said O. O. on the said, &c., was lawfully committed to the custody of the said G. H, then being keeper of her said Majesty's gaol of and for the said county of to wit, at, &c., aforesaid, by virtue of a certain warrant of commitment, duly made, under the hand and seal of the said W. D., then being such justice as aforesaid, bearing date the same day and year last aforesaid, upon and in pursuance of a certain charge, upon oath, made by the said R. R. against the said O. O. to and before him the said W. D., being such justice as aforesaid, alleging that the said O. O. had unlawfully [state the offence as set forth in the warrant], *and by which said last-mentioned warrant the said G. H. was required safely to keep the said O. O. until the then next general quarter session of the peace, to be holden in and for the said county of or until he should be thence delivered by due course of law, as by the said last-mentioned warrant more fully appears. And the jurors aforesaid, on their oath aforesaid, do further present, that the said D. M., so having the custody and keeping of the said keys as aforesaid, and well knowing the said last-mentioned premises, afterwards, to wit, on, &c., aforesaid, with force and arms, at, &c., unlawfully, voluntarily, and contemptuously did permit and suffer the said O. O. then being a prisoner in the said gaol, under the custody of the said G. H., by virtue of the said last-mentioned warrant, for the cause last aforesaid, to escape and go at large out of the said gaol wheresoever he would, without the knowledge, privity, or consent of the said G. H. being such keeper as aforesaid, and without any lawful authority whatsoever; whereby the said O. O. did then and there escape out of the said prison, and go at large whithersoever he would: to the great hindrance, &c.* [Conclude as in last form].

(6.) Commitment of the party escaping, and those aiding him.

[Commencement as usual, as *ante*, p. 346] *on the day of A. D. at the parish of in the said county, being lawfully in the custody of one C. D., a constable, under and by virtue of a warrant of one of his Majesty's justices of the peace, on suspicion of having feloniously, &c.,* [as in warrant], *unlawfully did escape out of the custody of the said C. D.; and that E. F., late of, &c., did then*

and there [feloniously and] *unlawfully aid and assist the said A. B. in so escaping as aforesaid. And you the said keeper, &c.* [as usual, as ante, p. 347, to the end].

(10.) *Forms.*

(7.) Indictment against prisoner for escaping out of the custody of a constable.

[State the charge before the magistrate, the commitment, and the defendant's being in the custody of A. C., as in the first form, *ante*, p. 347 to the*; and then, thus:] *And the jurors aforesaid upon their oath aforesaid do further present, that the said A. O., late of the parish of in the county of labourer, so being in the custody of the said A. C., under and by virtue of the warrant aforesaid, afterwards, and whilst he continued in such custody, and before he was delivered by the said A. C. to the said keeper of the gaol of or his deputy, to wit, on the day and year last aforesaid, at, &c., aforesaid, out of the custody of the said A. C., unlawfully did escape, and go at large whithersoever he would: to the great hindrance, &c.* [Conclude as in the last preceding form of indictment].

(8.) Commitmnet for conveying instruments to a prisoner, to enable him to escape, on 4 Geo. 4, c. 66.

[Commencement as *ante*, p. 346] *on the day of A. D. at the parish of in the said county,* [*feloniously and*] *unlawfully did convey into the common gaol at* [*two steel files*] *being instruments proper to facilitate the escape of prisoners, and delivered the same to C. D., who was then in custody there for* [state the offence concisely], *with intent to aid and assist the said C. D. to escape from and out of the said gaol, against the form of the statute in such case made and provided. And you the said keeper, &c.* [conclude as usual, as *ante*, p. 347. If the prisoner were not in custody for a felony, omit the word "feloniously"].

(9.) Indictment for a like offence.

——. (venue) *The jurors for our Lady the Queen upon their oath present, that before and at the time of the committing of the felony hereinafter mentioned; to wit, on the day of in the year of the reign of our sovereign Lady Victoria, at the parish of in the county of one C. D. was a prisoner, and in custody of one E. F., in the common gaol in and for the county of and that A. O., late of the parish aforesaid, in the county aforesaid, labourer, afterwards, and whilst the said C. D. was such prisoner and in custody as aforesaid, to wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, feloniously did convey and cause to be conveyed into the gaol aforesaid, two steel files, being instruments proper to facilitate the escape of prisoners, and the same files, being such instruments as aforesaid, then and there feloniously did deliver and cause to be delivered to the said C. D*, ["any prisoner or other person for the use of any prisoner"], *the said C. D. then and there being such prisoner in custody of E. F. as aforesaid, without the consent or privity of the said keeper of the said gaol; which said files, being such instruments as aforesaid, were then and there so conveyed into the said gaol, and delivered to the said C. D. by the said A. O. as aforesaid, with the felonious intent to aid and assist the said C. D., so being such prisoner and in custody as aforesaid, to escape, and attempt to escape, from and out of the said gaol, against the form of the statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.*

Escheat. *See post, "Forfeiture."*

Estray.

And herein also of goods *waived.*

Estray, what.

ESTRAY is, where any horses, sheep, hogs, beasts, or swans, do come into a lordship, and are not owned by any man. (*Kitch.* 23).

Where any horses, sheep, hogs, beasts, or swans.] Bees and other creatures of a wild nature are not within this description; and therefore not to be reckoned amongst stray goods. Nevertheless it seemeth that a swarm of bees, of which the owner hath lost sight, and consequently can make out no property, may be seized for the use of the king, or of the lord of the manor; for it is a maxim of the common law, that such goods whereof no one can claim property do belong to the king; and that which the king hath he may grant to another, and consequently another may prescribe to have the same within such a precinct or lordship. And therefore it is said, that if any take honey or swarms of bees within the demesne of the lord, it is inquirable in the court baron. (*Kitch.* 114).

Swans.]—Swans that are unmarked and wild (being at large and abroad) may be seized by the sheriff for the use of the king, by his prerogative. (*Dalt. Sher.* 80).

Also swans marked and tame may be estrays. (*Kitch.* 86). But it seemeth that no other fowl can be estray. (*Wood, b.* 2, *c.* 2).

Do come into a lordship.]—That is, where the goods have no right to be, and therefore an estray cannot be in such place, where the party hath a right of common. (*Dalt. Sher.* 79).

And are not owned by any man.]—Whereupon (as hath been said) the property accrueth to the king; and the cattle of the king cannot be estrays, nor forfeited as such to the lord of the manor. (*Kitch.* 81).

Waif, what.

Waif is, where a felon in pursuit waiveth the goods; or where the felon, for fear of being apprehended, thinking that a pursuit was made, having them with him in his possession, fleeth, and waiveth, casting away, or goeth from the goods; in these cases they shall be said to be waived in law. But if he hath not the goods with him when he fleeth being pursued, or for fear to be apprehended, they are not waived nor forfeited, but the owner may take them when he will, without any fresh suit. (5 *Rep.* 109; *Dalt. Sher.* 78).

But if the thief in his flight waive them, there the goods are forfeited to the king or lord of the liberty by the common law, if the felon upon fresh suit were not attainted at the suit of the owner of the goods. And the reason why waif is given to the king, and that the party shall lose his property in such case, is for default in the owner, that he pursued not freshly to apprehend the felon; for it concerneth the public that crimes do not remain unpunished. Therefore the law hath imposed this penalty upon the owner, that if the thief by his industry and fresh suit be not attainted at his suit, in an appeal for the same felony, he shall lose for his default all his goods, which the thief at the time of his flight waived. But if the thief had them not with him when he fled, having peradventure hid them, there no default can be in the party; and therefore they shall not be forfeited, for if he maketh fresh suit after notice of the felony it sufficeth. (5 *Rep.* 109).

Seizure thereof by the lord.

Heretofore waifs and strays were the finder's, by the law of nature; and afterward, the king's by the law of nations. (*Dalt. Sher.* 79).

Thus, one, as a bailiff or servant to the sheriff, seized a horse as an

estray to the king's use, and proclaimed him according to law, and after the year and day sold him, and the sheriff accounted for him in the exchequer. (*Id.* 80).

But now kings have granted this and such like prerogatives unto their subjects within their liberties; so that waifs and strays are in many places the lord's of the franchise where they are found. (*Id.* 79).

And therefore waived goods and estrays shall be *seized* by the officer of the king to the use of the king; or by the officer or bailiff of the lord, who hath such things by grant of the king, or by prescription, to the use of the lord. (*Id.* 80).

But if one have a waif, and it be taken out of his manor, he shall have *trespass* without seizing, and though he do not seize it. (*Kitch.* 81).

Proclaiming the goods seized.

It seemeth to be agreed that waifs and strays ought to be proclaimed in the two next market towns; and that if they be not proclaimed, the owner may take the stray goods again at any time. And it seemeth to be the general tenor of the old books, that they ought also to be proclaimed in the church: which course it seemeth best to follow; to the end that the owner, who in this case is no wrong doer, may have reasonable mean to come at his goods again; that is to say, that the goods be proclaimed at the least thrice, to wit, in the two market-towns next adjoining to the place where they strayed on the market-days respectively, and at the church-door on a *Sunday*, as the people come out of the church. (*Kitch.* 23, 81, 105; *Dalt. Sher.* 79. *Brownlow* v. *Lambert, Cro. Eliz.* 716).

How waifs or strays are to be kept.

And they ought to be wreathed; and to be put into some several ground in an open place, and not in any covert of wood, that the owner may have a view of them; for if they be in covert the property is not changed, though they be there a year and a day. (*Kitch.* 23).

An estray is not to be used in any manner, except in case of necessity, as to milk a cow or the like; but not to ride a horse, for within the year and day he hath not any property in him. (*Bagshawe* v. *Goward, Cro. Jac.* 147, 148).

In *Oxley* v. *Watts* (1 *T. R.* 12) it is determined, that an action of trespass lies for working a horse taken as an estray.

Owner claiming.

He who taketh an *estray* may keep it until he be satisfied for the finding, keeping, and proclaiming thereof. (*Dalt. Sher.* 79) (*a*).

But the owner (if it be within the year and day) may take it without telling any marks, or making any proof of property; but this may be done upon the trial, if contested. *Henley* v. *Walsh*, 2 *Salk.* 686; 11 *Mod.* 89, S. C.)

The lord ought to make a demand of what the amends should be; and then if the party think the demand unreasonable, he may tender sufficient amends; and if the lord shall not accept it, this shall be settled by the jury upon trial.

But it is sufficient in this case to tender amends *generally*, without expressing any certain sum. For there is a difference between this case and that of a tender of amends for trespass. In that of a trespass, if the defendant plead a tender of amends, he must show what he tendered; for he must tender a certain sum. And the law puts this difficulty upon him because he is the wrong-doer; but the owner of the stray (as hath been said) is no wrong-doer; and it is impossible he should know how long his beast hath been in the lord's custody, nor

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(*a*) But if any other person finds and takes care of another's property, not being entitled to it as an estray (nor being saved at sea, or in other cases where the law of salvage applies), the owner may recover it or its value, without being obliged to pay the expenses of keeping. (*Binstead* v. *Buck*, 2 *Bla. Rep.* 1117; *Nicholson* v. *Chapman*, 2 *H. Bla.* 254).

Eves Droppers.

how much will make a proper satisfaction. (*Henly* v. *Walsh*, 2 *Salk.* 686; 11 *Mod.* 89, S. C.).

In the case of goods *waived;* the owner may seize them twenty years after, if the lord of the franchise nor the king seized before; but if they are seized, then they become forfeited to the king, or the lord of the liberty. (*Kitch.* 82).

And this forfeiture is not like a stray, where, though the lord may seize, yet the party who is the owner may retake them within the year and day; but here the true owner cannot seize his own goods, though upon fresh suit within the year and day. (1 *Hale*, 541).

But this is not an absolute loss of the owner's goods, but rather an expedient settled by law to drive the owner to convict the felon by prosecuting his appeal; and therefore if he make fresh suit, and prosecute his appeal, and the felon be thereupon convict or attaint, and the fresh suit be inquired and found by verdict or inquest of office, he shall have restitution of the goods so waived. (1 *Hale*, 541; *Foxley's Case*, 5 *Rep.* 109).

Property accruing to the lord, on not claiming.

Waifs and strays not claimed within the year and day are the lord's. (*Kitch.* 23, 80, 81).

For where the lord hath a beast a year and a day, and it be cried in the church and markets, the property is changed. (*Kitch.* 80).

That is to say, after he hath had the beast a year and day from the time of the proclamation, and not from the time of the seizure; for after the first proclamation it becometh an estray, but not sooner. *Henly* v. *Welch*, 11 *Mod.* 89; 2 *Salk.* 686, S. C.)

If the estray within the year estray out of the manor, the lord may chase back the estray, unless it be seized by another lord who hath estrays; but if it be seized by such other lord, then the first hath lost all possibility of his gaining the property, and the other lord ought to proclaim it *de novo.* (*Finch*, 177; *Kitch.* 81; *Hutt.* 67).

After seizure the lord shall be charged for trespass done by an estray. (*Hutt* 67).

And he shall have a replevin if a stranger take it. (*Hutt.* 67). Or trespass. (*Winch.* 68).

Estreat.

ESTREAT (*extractum*) is used for the true copy or note of some original writing or record, and especially of fines and amerciaments imposed in the rolls of a court, to be levied by the bailiff or other officer. When however it is applied to a recognizance, it signifies that the recognizance itself is extracted or taken out from among the other records and sent up to the Exchequer. (4 *Black. Com.* 253).

As to the estreating of fines, penalties, for forfeitures and recognizances, see Geo. IV. c. 46, and 4 Geo. IV. c. 37.

See further as to Estreats, *post*, "*Fines and Forfeitures.*"

Eves Droppers.

EVES Droppers are such as listen under walls or windows, or the eves of houses, to hearken after discourse, and thereupon to frame slanderous and mischievous tales; are a common nuisance, and presentable at a

court leet: or are indictable at the sessions, and are punishable by fine; and are to find sureties for their good behaviour. (4 *Black. Com.* 168).

And *Dalton* says that *night-walkers*, that eve-drop men's houses, or cast men's gates, carts, or the like, into ponds, or commit other outrages or misdemeanors in the night, or shall be suspected to be pilferers, or otherwise like to disturb the peace, or that be persons of ill behaviour, or of evil fame or report generally, or that shall keep company with any such, or with any other suspicious person in the night, are liable to find sureties for their good behaviour.

Eves-droppers are indictable at the sheriff's torn as well as other dangerous and suspicious persons. (2 *Haw.* c. 10, s. 59). And it seems that a magistrate may also compel such persons to find surety for their good behaviour. (1 *Haw.* c. 61, s. 4; *see* "*Surety for Peace,*" *Vol. V.*)

Evidence.

Evidence, what.

EVIDENCE in legal understanding doth not only contain matters of record, as letters patent, fines, recoveries, inrolments, and the like, and writings under seal, as charters and deeds, and other writings without seal, as court rolls, accounts, and the like; but in a larger sense it containeth also the testimony of witnesses, and other proofs to be produced and given, for the finding of any issue joined between the parties. And it is called *evidence*, because thereby the point in issue is to be made evident to the jury. (1 *Inst.* 283).

Doctrine of, same in civil and criminal proceedings.

The law has laid down certain rules respecting the admissibility and effect of evidence, and the order in which it should be adduced: and in the application of these there is no difference between criminal and civil cases,—what may be received in the one case may be received in the other, and what is rejected in the one ought to be rejected in the other, by *Abbott, C. J.*, in *Rex* v. *Watson*, 2 *Stark. N. P. C.* 155, and per *Parke*, B., in *Leach* v. *Simpson*, 5 *M. & W.* 312. A fact must be established by the same evidence, whether it is to be followed by a criminal or a civil consequence. *Lord Melville's case*, 29 *How. St. Tr.* 763. *And see Reg.* v. *Murphy*, 8 *Car. & P.* 297; *Rex on pros. of Jackson* v. *Cator*, 4 *Esp.* 136, 9, 144; 2 *East's P. C.* 993; *Attorney-General* v. *Le Merchant*, 2 *T. R.* 201 n.; *Rex* v. *Watson*, 2 *Stark.* 155; 4 *Bla. Com.* 356; 1 *Chit. C. L.* 556).

We shall confine our considerations under this most important title to the rules and principles of evidence in *general*. As to the evidence on criminal prosecutions and proceedings in *particular* cases, the reader is referred to the different titles throughout the work.

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I. What should be proved.

What must be proved.

Before inquiring into the nature and mode of proof, it will be expedient to ascertain what parts of the charge contained in an indictment or information should be proved.

(1). In General.

(1). In general.

Generally every fact stated on the face of the indictment or information, which enters into the substance of the offence charged, as also all facts not so stated, but which are necessary to constitute the offence charged, must be proved. (*See* 2 *Leach*, 594).

Surplusage.

Averments stated in the indictment, if wholly unconnected with the charge, may be considered as *surplusage*, and need not be proved, (*Id.*): and see further as to what is surplusage, 1 *Chit. C. L.* 294, *post*, "*Indictment*," *Vol. III.*

Divisible averments.

It is sufficient to prove so much of the indictment as shows the defendant to have been guilty of the substantive crime therein stated, though not the full extent charged on him. (*See R.* v. *Hunt*, 2 *Camp.* 513). Thus on an indictment charging the defendant with having done, and caused to be done, a particular act, it suffices to prove either. (*Id.*, *and see post*, "*Indictment*," *Vol. III.*) So where a man was charged with publishing a libel against magistrates, with intent to defame those

magistrates, and *also* with intent to bring the administration of justice into contempt, *Bailey*, J., held, that proof of his having published it with either of those intentions would support the indictment. (*R.* v. *Evans*, 3 *Stark.* 35). The offence however of which he is convicted must be of the same class with that with which he is charged. (*R.* v. *Westbeer*, 1 *Leach*, 14; 2 *Str.* 1133, S. C.) Thus on an indictment for felony, if a misdemeanor only be proved, the prisoner must be acquitted, but he may be found guilty of a felony of lesser atrocity, as on indictment for murder, he may be found guilty of manslaughter; on an indictment for breaking a house and stealing, he may be convicted of simple larceny. (*Dick. Sess.* 351). So, on an indictment for misdemeanor in assaulting a constable in the discharge of his duty, the defendant may be convicted of a common assault. (*Id.*) If a man be charged with an offence as principal in the first degree, evidence of his being principal in the second degree will support the indictment, and *e contrà*. (*Fost.* 351; 9 *Co.* 67 *b*; *Plowd.* 98; *Reg.* v. *Rhodes*, 2 *Ld. Raym.* 886; 1 *Hale*, 122; 2 *Hawk.* c. 46, s. 35, *&c.*) On an indictment for killing a sheep, with the intent to steal the whole carcase (now provided against by 7 & 8 Geo. IV. c. 29, s. 25), proof of killing, with intent to steal a *part*, is sufficient to support the charge. (*R.* v. *Williams*, *R. & M. C. C. R.* 107).

1. *What should be proved.*

Generally speaking, the evidence adduced must be *relevant and confined to the issue*. Therefore the prosecutor cannot generally injure the character of the defendant by giving in evidence other crimes not laid to his charge in the indictment; but when such crimes are connected with, and have a direct tendency to establish the guilt of the defendant in the specific crime charged, then they may be admitted in evidence. Thus, in high treason, though by 7 & 8 Will. III. c. 3, s. 8, no evidence shall be admitted or given of any overt act not expressly charged in the indictment; yet this does not prevent overt acts not laid from being given in evidence, if they be direct proof of any of the overt acts which are laid. (*R.* v. *Rookwood*, 4 *St. Tri.* 661, 697; *Holt*, 683; *R.* v. *Watson*, 2 *Stark.* 134). In an indictment against persons for a conspiracy to carry on the business of common cheats, evidence was admitted of the defendants having made false representations to other tradesmen besides those named in the indictment. (*R.* v. *Roberts*, 1 *Camp.* 400. *See R.* v. *Brisac*, 4 *East*, 171). In *R.* v. *Hunt and Others*, (3 *Barn. & Ald.* 566), upon an indictment for conspiring and unlawfully meeting for the purpose of exciting disaffection and discontent among his Majesty's subjects at Manchester, it was holden that the previous conduct of a portion of the assembly, in training, &c., and in assaulting persons whom they called spies, was competent evidence as to the general character and intention of the meeting, although the effect of it as to each particular defendant was a distinct matter for the consideration of the jury. It was also holden, that it was competent to show, as against *Hunt*, (who, though a stranger except by political connexion, had been invited to preside as chairman at the meeting), that at a similar meeting in another place, holden for an object professedly similar, certain resolutions had been proposed by that person; it being in its nature a declaration of his sentiments and views on the particular subject of such meetings, and of the topics there discussed. But the court held, that evidence of the misconduct of the military and others, in the subsequent dispersion of the meeting, was properly refused by the judge at the trial as irrelevant, and having no bearing upon the intention and objects of the meeting; which intention and objects obviously existed previously to the alleged misconduct of the military, attempted to be given in evidence. So where persons who had formed part of a mob obtained money from a party by advising him to give money to the mob, and were indicted for this as a robbery, it was held, that the prosecutor, to show that this was not *bonâ fide* advice, might give evidence of demands of money made by the same mob at other places before and afterwards in the

Evidence must be confined to the issue.

1. *What should be proved.*

course of the day, if any of the prisoners were present on those occasions. (*Rex* v. *Winkworth*, 4 *C. & P.* 444; *and see Rex* v. *Mogg*, 4 *C. & P.* 364). In a case where the prosecutor, suspecting the prisoner, had put marked money into his till, and caused him to be watched, evidence was admitted of several visits to the till by the prisoner, of several inspections of the till consequent upon them, and of the several results of those inspections, that the money was each time reduced, though it was objected that this was proof of several felonies. (*Rex* v. *Ellis*, 6 *B. & Cres.* 145; 9 *D. & R.* 174, S. C.) So on the trial of a robbery effected by a threat of a revolting description, evidence of an attempt by the prisoner to obtain the money at another time was allowed. (*Rex* v. *Egerton*, there cited; *and see Rex* v. *Wylie*, 1 *New Rep.* 94). So where a number of articles are found in the prisoner's possession, the mere probability that he stole them at different times is no ground for requiring the prosecutor to confine his evidence to one of them, if they might have been stolen at once. (*Rex* v. *Dunn*, *R. & M. C. C.* 148; *and see post*, "*Rape*," *Vol. V.*) Where evidence is for one purpose properly applicable to the issue, it is no objection that it also incidentally tends to prove a particular fact respecting which it is not legal evidence. The jury, however, should be cautioned as to the purpose to which such evidence is to be applied. (*See Willis* v. *Bernard*, 8 *Bing.* 376).

Knowledge and intent.

Knowledge and Intent, when material, must be made out by the prosecutor. He cannot, of course, make them out by direct evidence, unless when they have been confessed; but both may be gathered from the conduct of the party, as shown in proof; and when the tendency of his actions is direct and manifest, he must always be presumed to have designed the result when he acted. (*Dick. Sess.* 353; *Rex* v. *Philipps*, 6 *East*, 464). On an indictment for murder, former attempts of the defendant to assassinate the deceased are admissible in evidence; so are former menaces of the defendant, or expressions of vindictive feeling towards the deceased, or, in fact, the existence of any motive likely to instigate him to the commission of the offence in question. (*See Arch. C. L.* 73). So on an indictment for uttering forged notes, or counterfeit coin, evidence of previous utterings of other notes, or coin, was admitted, though they were not charged on the record. (*Rex* v. *Ball*, *R. & R. C. C.* 132; 1 *Camp.* 324, S. C.; *Rex* v. *Wylie*, 1 *New. Rep.* 92, &c.) But, in another case, where the second uttering had been made the subject of a distinct indictment, evidence of such uttering was, in the discretion of the judge, refused. (*Rex* v. *Smith*, 2 *C. & P.* 633; *Talfourd's Dick. Sess.* 359. *But see Rex* v. *Kirkwood*, *Lewin*, *C. C.* 103). From the cases of *Rex* v. *Taverner*, (*Carr. C. L.* 195), and *Rex* v. *Smith*, (4 *C. & P.* 411), it should seem that in order to enable the prosecutor to give in evidence other utterings *subsequent* to that charged in the indictment, they must in some way be connected with the principal case, or the notes or bills must be of the same manufacture, and precisely similar. Indeed, even with regard to *previous* utterings of forged notes, it seems doubtful whether they can be given in evidence to show a guilty knowledge, when not of the same description and denomination with the note in question. Such evidence, however, has sometimes been received. (*See Rex* v. *Millard*, *Russ. & Ry.* 245; *and Rex* v. *Kirkwood*, *Lewin*, *C. C.* 103).

Where several offences charged.

On an indictment for *felony*, embracing a number of charges essentially distinct, the court will, in its discretion, quash the indictment, or compel the prosecutor to elect on which charge he will proceed. (*Rex* v. *Jones*, 2 *Camp.* 132; *Rex* v. *Galloway*, *R. & M. C. C.* 234, *id.* 146). But, on an indictment for *misdemeanors*, it is otherwise; and several distinct offences, when charged, may be proved. (*See id. Rex* v. *Benfield*, 2 *Burr.* 984; *Rex* v. *Flower*, *post*, "*Indictment*," (*several counts in*), *Vol. III.*)

1. *What should be proved.*

Matters of defence, which should more properly come from the defendant, need not be proved. As a branch of this rule, in indictments on statutes where an *exception or proviso* is mixed up with the description of the offence, the correct rule is, that in cases where the subject of such averment relates to the defendant personally, or is *peculiarly within his knowledge*, the negative is not to be proved by the prosecutor, but, on the contrary, the affirmative must be proved by the defendant, as matter of defence. But, on the other hand, if the subject of the averment do not relate personally to the defendant, or be not peculiarly within his knowledge, but, on the contrary, either relate personally to the prosecutor, or be peculiarly within his knowledge, or at least be as much within his knowledge as within the knowledge of the defendant, the prosecutor must prove the negative. (*Arch. C. L.* 70). Thus, informations upon the game laws must negative the defendant's qualification to kill game: but this negative need not be proved upon the part of the prosecution; on the contrary, the defendant must prove the affirmative of it as matter of defence. (*Rex* v. *Turner*, 5 *M. & Sel.* 206). So on an information for selling ale without a license, it lies on the defendant, who has been shown selling ale, to prove his license. (*Rex* v. *Hanson*, 5 *M. & Sel.* 209). On the other hand, upon an indictment on stat. 42 Geo. III., c. 107, s. 1, which made it felony to course deer in an enclosed ground, without the consent of the owner, it was held, that the deer were coursed *without the consent* of the owner, was necessary to be proved upon the part of the prosecution. (*Rex* v. *Allen*; *Rex* v. *Argent*; *Rex* v. *Chamberlain*, *R. & M. C. C. R.* 154; *Rex* v. *Rogers*, 2 *Camp.* 654; *Arch. C. L.* 70). The owner himself, however, need not be called; his non-consent might be inferred from other circumstances, or proved by his agents. (*R. & M. C. C. R.* 154).

Matters of defence.

Exceptions.

Matter peculiarly in defendant's knowledge.

Presumptions of law, and those facts which the courts *ex officio* take notice of without proof, need not be proved; (*see Williams* v. *The E. I. Company*, 3 *East*, 192; *Evans* v. *Birch*, 3 *Camp.* 10, 12; *Banbury Peerage case*, 2 *Selw. N. P.* 709). The court will not take judicial notice of the rules made by the Poor Law Commissioners for the government of a union under stat. 4 & 5 W. 4, c. 76, s. 15. (*Reg.* v. *Dolgelly Union*, 8 *Ad. & E.* 561; 3 *Nev. & P.* 542). Nor that a particular street is not in a certain county, although it may be generally known to be in another. (*Humphreys* v. *Budd*, 9 *Dowl.* 1000). And as to what facts the courts will take notice of, *see* 1 *Chit. Plead.* 196 to 264.

Presumptions of law and facts ex officio noticed.

Where any act is required to be done by one, the omission of which would make him guilty of a *criminal neglect* of duty, the law presumes the affirmative, and throws the burden of proving the negative on the party who insists on it. (*Williams* v. *The E. I. Company*, 3 *East*, 192; *Evans* v. *Birch*, 3 *Camp.* 10; *R.* v. *Hawkins*, 10 *East*, 216; *R* v. *Twyning*, 2 *B. & Al.* 386). Where a party has acted in a public capacity, it will be presumed he was duly appointed; and this, whether the effect of such presumption be to charge himself with some breach of duty, or to charge a third party with some offence towards him in that particular capacity. Thus, on an indictment for the murder of a constable in the execution of his duty, it is sufficient that he was known to act as a constable, and his appointment need not be produced. (*R.* v. *Gordon*, 1 *Leach*, 515; 1 *East*, *P. C.* 352, S. C.) And on an indictment against a letter carrier for embezzlement under 2 W. IV. c. 4, proof that he acted as a letter carrier will suffice, without producing his appointment. (*R.* v. *Barrett*, 6 *C. & P.* 124).

Negative, involving culpable omission.

The *identity* of the defendant must be established, and this is for a jury to decide on. (*See* 1 *Chit. C. L.* 558). The question of the defendant's guilt frequently also involves that of the identity of other parties, as in cases of forgery and bigamy. In the latter case it will not suffice to prove, by the testimony of a person present at the second marriage, that the female was married by the name mentioned in the in-

Identity.

1. *What should be proved.*

dictment; it must be proved that such was her name. (*R.* v. *Drake, Lewin, C. C.* 25). In order to identify a person in court with one whom the witness has described, the attention of the witness may be directed to the person in court, and he may be asked whether that is the person of whom he has spoken. (*R.* v. *Watson*, 2 *Stark. C. N. P.* 128). Where an indictment charged that a person shot at one Harvey Garnett Phipps Tuckett, it was held that Tuckett's card could not be given in evidence against him on his trial to prove the name, as its contents were not shown to have been communicated to him. (*Reg.* v. *Douglas*, 1 *Car. & M.* 193).

(2). In Particular.

(2). In particular. Venue and place.

Venue and Place.]—The offence must in general be proved to have been committed in the county in which the defendant is indicted, unless in particular cases, where the legislature has by act of Parliament dispensed with it; and as to which, see *post*, "*Indictment*," (*Venue in*), *Vol. III.*

If the offence be not proved to have been committed in the county or other extent of the court's jurisdiction, the defendant must be acquitted. See, as to the evidence of publication of a libel in the county wherein defendant is indicted, *post*, "*Libel*," *Vol. III.*—also, "*Forgery*," *Vol. III.*—"*Larceny*," *Vol. III.*—"*Treason*," *Vol. VI.*

It is in no case, not even in treason or murder, in general necessary to prove that the offence was committed at the precise village, parish, or place laid in the indictment; but it suffices to prove that it happened anywhere within the proper county. (*See* 2 *Hawk.* c. 25, s. 84). In a late case, where an indictment for robbery stated that it was in a field near the king's highway, and the robbery was not proved to be near any highway, it was considered sufficient. (*R.* v. *Wardle, R. & R. C. C.* 9).

There are, however, some exceptions to this rule, as, where the place is the essence of the crime, as in indictments for burglary, or for not repairing, or any other nuisance to a highway. (2 *Hall*, 179, 244; 4 *Bla. Com.* 306: 2 *Hawk.* c. 25, s. 84; *and see* "*Game*," (*Night Poaching*), *Vol. III.*)

So, where the place stated is so stated as matter of local description and not as *venue* merely, it must be proved as stated.

So, if the indictment be on a particular statute, which gives the penalty to the poor of the parish in which the offence was committed, the offence must be proved to have been committed in the parish stated in the indictment.

It was formerly thought that in indictments for treason or felony, if there be no such place within the county as that alleged in the indictment, the defendant must be acquitted according to the 9 Hen. V. st. 1, c. 1, which was supposed to declare such an indictment void; but that the disproof lies with the defendant. In a late case, however, where the prisoner was indicted for setting fire to a stack of beans, at Normanton in the Wold, and it appeared, that though there was a hamlet, there was no parish of that name, nor any parish of the name of Normanton; it was held, that the offence having nothing of locality in it, the fact of there being no such place in the county, was matter only for plea in abatement. (*R.* v. *Woodward, R. & M., C. C.* 313; *and see R. & M., C. N. P.* 433. *Post*, "*Indictment*," *Vol. III.*)

Time.

Time.]—It is in no case necessary to prove the precise day, or even year, laid in the indictment, except where the particular time enters into the essence of the offence. (*See per Lawrence*, J., *Purcell* v. *Mc Namara*, 9 *East, Rep.* 162; *and see* 2 *Inst.* 218; *Holt*, 301; 2 *Hawk.* c. 23, s. 88). As in an indictment for burglary, though it is necessary to prove that it took place in the night-time, yet it is not necessary to prove strictly that it took place at the hour or day stated in the indictment. (2 *East's*

P. C. 513). And where a statute, without altering the nature of the offence, provides, that if committed after a certain day it may be tried in the county where the party is apprehended, and may be laid as committed in that county, it is no objection that the day laid in the indictment is previous to the specified day, if the offence was not actually committed till after it. (*Rex* v. *Treharne, R. & M., C. C.* 298).

1. *What should be proved.*

So in an indictment for setting fire to a barn, stating it was set fire to in the night-time, it is not necessary to prove it was so, for there was no necessity for the averment that the offence was committed in the night. (2 *East's P. C.* 1021, 1035).

An overt act, or acts of treason, may be proved to have been committed on a day different from that stated in the indictment. (*Fost.* 8, 9; 1 *East's P. C.* 125).

In cases where the day is stated as matter of description, as in describing the date of a deed or other written instrument, the variance would be fatal, unless in the case of indictments for misdemeanor, when the indictment may be amended for such a defect under the 9 Geo. IV. c. 15. (*Ante*, "*Amendment*," *Vol. I. See Coxon* v. *Lyon*, 2 *Camp.* 307, n.; *Freeman* v. *Jacob*, 4 *Camp.* 209; *Green* v. *Rennett*, 1 *T. R.* 656).

Where there are several offences, and they are described as having been committed on such a day and divers days and times afterwards, evidence cannot, it seems, be admitted to prove more than one offence prior to the day named. (*B. N. P.* 86; 1 *Saund.* 24, n.; 1 *Stark. C. N. P.* 351). And if a person be charged with a burglary and stealing the goods, the prosecutor, on failing to prove that these facts were committed on the day laid in the indictment, cannot be admitted to prove that a distinct larceny was committed on a prior day. (2 *Leach*, 708).

Name of prosecutor and third persons.

Name of Prosecutor and third Persons.]—A variance in proof between the real name of a prosecutor or third party and that stated in the indictment will be fatal, unless such name can be rejected as a surplusage. (*R. & M. C. C.* 1; 2 *East's P. C.* 593; 2 *Hawk.* c. 25, s. 72. See the question raised in *R.* v. *Messingham, R. & M. C. C.* 257). But if the name of the prosecutor be that by which he is usually known, it will suffice. (*R.* v. *Norton, R. & R.* 510). And in a late case where the prisoner was indicted for stealing the goods of Richard Pratt, and it appeared his name was Richard Jeremiah Pratt, but that he was equally well known by the name of Richard Pratt, the indictment was held sufficient. (*Rex* v. ——, 6 *C. & P.* 408). See the mode of stating names, &c., *post*, "*Indictment*," *Vol. III.* In an indictment for stealing, to the amount of 40*s.*, in the dwelling-house of A. B., under the repealed act, 12 Anne, c. 7, the defendant was acquitted of the capital part of the charge when not strictly proved to have been the house of A. B., and found guilty of the simple larceny. (*Leach*, 339, n. *a*, 252).

If a party be described as a person to the jurors unknown, and it appear in evidence that his name was known at the time of finding the bill of indictment, the defendant will be acquitted. (*See Rex* v. *Walker*, 3 *Camp.* 264; *Holt's C. N. P.* 595).

Written instruments.

Written Instruments]—A written instrument set out in the indictment must be proved as alleged, or a variance will be fatal, unless allowed to be amended under the provisions of the 9 Geo. IV. c. 15, (*ante*, "*Amendment*," *Vol. I.*) which allows amendments in the courts at Westminster, and Oyer and Terminer, on variances in proofs of written and printed instruments in *misdemeanors*. (See various instances as to what are variances in setting out written instruments, *post*, "*Indictment*," *Vol. III.*—"*Libel*," *Vol. III.*—"*Forgery*," *Vol. III.*—"*Perjury*," *Vol. V.*)

Goods, &c.

Goods, &c.]—In an indictment for an offence relating to personal pro-

2. *Degree and kind of proof.*

perty, the evidence must correspond with the description of the goods in the indictment; as, in larceny, an indictment for stealing a pair of shoes cannot be supported by evidence of a larceny of a pair of boots. (*Archb. C. L.* 66). And this will be the case even when the goods are described in the indictment with unnecessary particularity, unless the unnecessary part of the description can be rejected, as surplusage. (*R.* v. *Edward*, *R. & R.* 497). So on an indictment on 15 Geo. II. c. 34, and 14 Geo. II. c. 6, (which made it a felony to steal any ox, cow, or heifer), charging defendant with stealing a cow, proof of its being a heifer will not suffice; for the statute having mentioned both cow and heifer, proved that the words were not considered by the legislature as synonymous. (*R.* v. *Cooke*, 2 *East's P. C.* 617; *Leach*, 123; *and see R.* v. *Loom*, *R. & M. C. C.* 160; *R.* v. *Puddefoot*, *id.* 247; *R.* v. *Beaney*, *R. & R. C. C.* 416; *R.* v. *Welland*, *id.* 494. *See post*, "*Indictment*," *Vol. III.*)

Number.

A variance in the number of the goods, if such precise number stated do not constitute the essence of the offence, is immaterial.

Sums.

Sums]—It is in general unnecessary to prove the precise sum laid in the indictment, unless the precise sum forms the essence of the offence, or is stated as matter of description. Thus in an indictment for extortion, or taking a greater brokerage than is allowed by act of parliament, it is not necessary to prove the taking of the precise sum laid. *R.* v. *Gilham*, 6 *T. R.* 265; *Grimwood* v. *Barrit*, *id.* 462; *Pope* v. *Foster*, 4 *T. R.* 590). Where the value of property is essential to constitute an offence, it must be proved to have been sufficient for that purpose. (*See post*, "*Indictment*," *Vol. III.*)

II. Degree and kind of Proof.

And herein of,—1. Best Evidence;—2. Secondary Evidence;—3. Presumptive evidence;—4. Hearsay Evidence;—5. Dying Declarations;—6. Confessions;—7. Opinions;—8. Evidence of Character.

(1). Best Evidence.

(1). The best evidence is required.

It is a general rule that the *best evidence* must be given of which the nature of the thing is capable. (*Gilb. Ev.* 13; *Bull. N. P.* 293).

The true meaning of this rule is, not that the courts of law require the strongest possible assurance of the matter in question, but that no evidence shall be given, which from the nature of the thing supposes still greater evidence behind in the party's possession or power; for such evidence is altogether insufficient and proves nothing, but carries with it a presumption contrary to the intention for which it is produced. Thus if a party offer a copy of a deed or will, where he has it in his power to produce the original, this raises a presumption, that there is something in the deed or will, which, if produced, would make against the party; and therefore the copy in such a case is not evidence. But if he prove the original deed or will to be in the hands of the adverse party, who refuses to produce it, although he has received a regular notice for that purpose, or in the hands of a person privileged from producing it, and who insists on his privilege (*Marston* v. *Downes*, 6 *C. & P.* 381), or if he prove that the original has been lost or destroyed without his default, no such presumption can reasonably be made, and a copy will be admitted (*a*), because then such copy is the best evidence

(*a*) In the case of the *Attorney-General* v. *Le Merchant*, (2 *T. R.* 201, n.), it was solemnly decided in the Court of Exchequer, that there is no difference in this respect between criminal and civil cases; that in both parol evidence may be given of the contents of a paper in the defendant's possession, on his refusing to produce it after notice for that purpose. *And see* 1 *Leach*, 300 (*n*).

that can be produced. (*Bull. N. P.* 293; 1 *Phill. Ev.* 7 ed. 218. *See also, per* Lord *Tenterden, the Queen's Case*, 2 *B. & B.* 286; *R.* v. *Radwen*, 8 *B. & Cres.* 708; *Williams* v. *The East India Company*, 3 *East*, 193, 201; *R.* v. *Stoke Golding*, 1 *B. & Al.* 173; *R.* v. *Chadwick*, 6 *C. & P.* 181). This rule, that the best evidence must be produced, precludes a witness from refreshing his memory with a copy of the instrument, which might itself be used for refreshing his memory. *See Burton* v. *Plummer*, 2 *Adol. & Ellis*, 341; *Rex* v. *St. Martin's Leicester*, *id.* 215).

2. Degree and kind of proof.

Although the best evidence is thus requisite, yet the strongest possible assurance of a fact, or, in other words, the greatest *quantity* of existing proof, is not so. Thus, for example, if a deed be attested by several subscribing witnesses, the execution may be proved by one of them; or if none of those witnesses can be produced, proof of the signature of one witness will be sufficient; for the proof is, as far as it goes, complete, and not inferior in its kind to any that can be produced. (1 *Phill. Evid.* 220; *Stark. Evid. Part III.* 391. *See Wright* v. *Doe* d. *Tatham*, 3 *Nev. & Man.* 268; 1 *Adol. & Ellis*, 3, S. C.)

And this rule as to the best evidence does not apply, unless the evidence proposed be in its general nature of an inferior degree to that for which it is sought to be substituted: and upon this principle, the supposed writer of an instrument need not be called to prove he wrote it: the evidence of another person who can speak to his handwriting will suffice. (*Stark. Evid. Part III.* 391; *Liebman* v. *Pooley*, 1 *Stark. C. N. P.* 167; 1 *Chit. C. L.* 567 a). And it seems that similar evidence will be admitted to prove that it is not the handwriting of a particular person without calling that individual himself. (*R.* v. *Hughes*, 2 *East's P. C.* 1002; *Bank Prosecutions*, *R. & M. C. C.* 380).

Admissions by parties to the suit.

The party's own admission or declaration also will sometimes supersede the necessity of having other evidence: (*see* "*Confession*," *Vol. I.*) unless where a statute expressly requires other evidence. And such admissions or declarations though verbal are always admissible in evidence against the party, though they relate to the contents of a deed or other written instrument not produced. (*Slatterie* v. *Pooley*, 6 *M. & W.* 664; *Newhall* v. *Holt*, 6 *M. & W.* 662; *Howard* v. *Smith*, 3 *Scott, N. R.* 574).

Parol evidence when allowed to prove a fact which may be proved by written evidence.

Parol evidence is in general esteemed inferior in its nature to written evidence; consequently where there is written evidence it must be first resorted to. (*Brewer* v. *Palmer*, 8 *Esp.* 213; *Doe* v. *Griffiths*, 6 *Bing.* 533). Very nice questions have indeed arisen as to whether parol evidence is admissible to prove a fact which may be evidenced by a written instrument. It is clearly admissible in some cases, as where the narrative of a fact to be proved has been committed to writing, it may yet be proved by parol evidence. Thus a receipt for money will not exclude parol evidence of the payment. (*Rambert* v. *Cohen*, 4 *Esp.* 213.) So a parol admission of the fact of a debt may be given in evidence, notwithstanding the promise to pay is in writing. (*Singleton* v. *Barrett*, 2 *Cr. & J.* 369). So where the fact to be proved was, that a certain person occupied land as tenant, so as to gain a settlement by 13 & 14 Car. II., it was held, that although there was a written contract, the fact might be proved by parol. (*R.* v. *Inhabitants of Holy Trinity*, 7 *B. & C.* 611). So although there exists a deed of partnership, yet the fact of partnership may be proved by the acts of the parties. (*Alderson* v. *Clay*, 1 *Star.* 405). So the entry in the parish register is not the only evidence of the fact of marriage, but it may be proved by persons who were present and witnessed the ceremony, or by general reputation. (*Evans* v. *Morgan*, 2 *C. & J.* 453). The inscription on a monument may be proved by parol. (*Doe* v. *Cole*, 6 *C. & P.* 359). So the inscriptions and devices on banners displayed at a public meeting may be proved by parol, and it is not necessary to produce the banners themselves. (*R.* v. *Hunt*,

2. *Degree and kind of proof.*

3 *B. & A.* 566). And resolutions passed at a public meeting may be proved by parol, although it should appear that those resolutions were read from a written or printed paper. (*Id.* 568).

In *Hunt* v. *Allewyn* (1 *M. & P.* 433), it was held, in an action for not accounting for the produce of a bill delivered to defendant to get discounted, that the bill need not be produced, and that plaintiff might give parol evidence of its contents. And in an action for shooting a dog, brought against the owner of a plantation and his gamekeepers, it appeared that, in the plantation in which the dog was shot, there was fixed on a pole a board, on which was painted, "All dogs found trespassing in this plantation will be shot," it was held, that a copy of that which was painted on the board might be given in evidence without notice to produce the original board. (*Bartholomew* v. *Stephens*, 8 *Car. & P.* 726).

A witness called to prove the terms of a verbal agreement stated, that he was in company with the plaintiff and defendant when it was entered into, and referred to an entry which he made a few hours afterwards to refresh his memory. This entry was made by him from a paper written in pencil by the plaintiff during the interview between the parties, and read by him to the defendant, as embodying the terms of their agreement. The defendant assented to it; but he neither signed, nor was asked to sign it, nor was it shown to him; and it was held, therefore, not necessary to produce this paper as constituting the real agreement. (*Tyrwhitt* v. *Lambert*, 3 *Per. & D.* 676; 10 *Ad. & E.* 470, S. C.; *and see Hope* v. *West*, 7 *Scott*, 876).

In *R.* v. *Hunt* and *Bartholomew* v. *Stephens*, above cited, perhaps it was considered that the parol evidence was, under the circumstances, as original and primary in its nature as the evidence, the production of, and notice to produce which, was dispensed with. (*And see Phil. on Ev.* 169).

When not allowed.

The general rule, however, is the one above stated, that where there is written testimony, it must be resorted to before verbal testimony. And in a late settlement case, where the respondents, in order to show that the pauper was not the sole tenant, attempted to prove by parol evidence, that the premises were let to the pauper and two other persons, but the witness, on cross-examination, having stated that the letting was by a written instrument, the Court of King's Bench held it could be only proved by that instrument. (*R.* v. *Rawden*, 8 *B. & Cres.* 708). Now by the 6 Geo. IV. c. 67, s. 2, a settlement by renting a tenement can only be acquired when the same has been *bonâ fide* rented for a year, at 10*l.* a year; and in *Rex* v. *Merthyr Tidvil* (1 *B. & Adol.* 29), which was a case of a settlement under this act, it was held, that such a renting can only appear by reference to the agreement with the landlord, and could not therefore be proved by parol, where the contract was in writing, and might have been produced. The case of *R.* v. *Holy Trinity Kingston-upon-Hull* (7 *B. & C.* 611) was cited in support of the position that parol evidence was admissible. *Sed per Bayley*, J.—'This case is clearly distinguishable from *R.* v. *The Inhabitants of Holy Trinity*, the facts of which took place before the passing of the statutes 59 Geo. III. c. 50, and 6 Geo. IV. c. 57, and when the proofs necessary for establishing this kind of settlement were, that a tenancy subsisted, and that the value of the tenement was 10*l.* a year. At that time the terms of the agreement were immaterial, except as a test of value; and when proved, they did not preclude the sessions from determining for or against the settlement. *R.* v. *The Inhabitants of Holy Trinity* decided this only, that where the terms of the tenancy were not material, the fact of tenancy might be proved without the terms. But under 6 Geo. IV. c. 57, they are essential, for this act requires the tenement to be *bonâ fide* rented for the term of a year, at 10*l.* a year; and it is therefore necessary to know what was the rent contracted for, which cannot be proved without reference to the agreement itself. That having been in

writing, the general rule of evidence prevails, and the order is therefore bad.' In *Strother* v. *Barr* (2 *M.* & *P.* 207; 5 *Bing.* 136, S. C.), the Judges of the Court of Common Pleas were equally divided in opinion on a question of this kind. (*See also R.* v. *Castle Morton*, 3 *B.* & *Al.* 588; *M.* & *M.* 257: *Davis* v. *Reynolds*, 1 *Stark. C. N. P.* 115). Again, where a charitable society entered in their book a resolution with regard to the employment of a secretary, and the plaintiff afterwards engaged with them as such, on the terms specified in the book which was kept by him, it was held, in an action for work and labour, that he was bound to produce the book containing the resolution. (*Whitford* v. *Futin*, 10 *Bing.* 395; 4 *Moo.* & *S.* 166, S. C.) Where, in ejectment, the plaintiff's witness proved an acknowledgment by the defendant, that he held under *T.*, and stated that he, the witness, had drawn an agreement touching the premises between the plaintiff and *T.*, it was held that the plaintiff was bound to produce the writing. (*Fenn* v. *Griffith*, 6 *Bing.* 533; *see* 1 *Nev.* & *M.* 10). And in *Doe* v. *Harvey* (8 *Bing.* 239), it was held, that where a party holds land under a written agreement, parol evidence cannot be received of the fact under whom he came into possession. In *Jones* v. *Tarlton* (1 *Dowl.* N. S. 625; 9 *M.* & *W.* 675, S. C.), it was held, that the contents of a notice hung up in a steam-packet office cannot, if moveable, be given in evidence without a notice to produce the original, aliter, if the notice be fixed to the freehold; and *Parke*, B., in delivering judgment, says, "According to ordinary rules of law, the notice itself should have been produced. The exceptions to the rule are cases in which the material on which the document is written is not easily removed, as in the case of things fixed in the ground, or to the freehold; for the law does not expect a man to break up his freehold for the purpose of bringing a notice into court; but that ground of exception will not apply to this case, for there could be no difficulty or inconvenience in removing the board from the nail on which it was hung."

2. *Degree and kind of proof.*

In *Bucher* v. *Jarratt* (3 *B.* & *P.* 143), it is said, that though the contents of a written instrument cannot be proved by parol, evidence of its general character may.

If oral evidence of an agreement be given at a trial, the party desirous of excluding it may ask the witness in cross-examination whether it was not in writing; and a party may, on cross-examination, inquire as to the subject of a writing, in order to show that parol evidence is inadmissible. (*Curtis* v. *Greathead*, 1 *A.* & *E.* 167). But there can be no doubt that a party may, by keeping out of view, if he can, a written instrument, make out by parol testimony a *primâ facie* case without it, and then it lies on the opposite party to rebut the case so made out. (*Per Bailey*, J., *R.* v. *The Inhabitants of Rawden*, 8 *B.* & *Cres.* 710).

And under such circumstances the defendant will not be allowed to give an unstamped written contract in evidence, for the purpose of nonsuiting the plaintiff. (*Fielder* v. *Ray*, 6 *Bing.* 332; *Reid* v. *Deere*, 7 *B.* & *C.* 266; *R.* v. *Padstow*, 4 *B.* & *Ad.* 208). And where a plaintiff closes his case without its appearing that there is any written contract relating to the subject matter of the action, the defendant, if he means to set up that there is such a contract, must produce it properly stamped, so as to be receivable in evidence; and it makes no difference that the plaintiff has had notice to produce the document. (*Magnay* v. *Knight*, 2 *Scott, N. R.* 64; 1 *Man.* & *G.* 944). And if a defendant who has had notice to produce a written document on the trial, refuses to produce it in the course of the plaintiff's case, and the plaintiff gives secondary evidence, the defendant cannot afterwards put the document in evidence as part of his own case. (*Doe* d. *Thompson* v. *Hodson*, 4 *Per.* & *D.* 142; 12 *Ad.* & *Ell.* 135).

Best evidence dispensed with by particular statutes.

Particular statutes sometimes dispense with the best evidence. Several statutory provisions to this effect will be found under titles "*Excise and Customs*," *post*,—"*Stage Coaches*," *Vol. V.*;—"*Newspaper*," *Vol. V.*;—

2. *Degree and kind of proof.*

"*Libel*,"—"*Highway*," *Vol. III.*;—and as to Bankruptcy, and Insolvency Proceedings, *post*, 402; Ship's Register, &c. *post*, 391.

When the copy of a document (the document itself not being evidence at common law) is made evidence by act of parliament, a copy must be produced; the original is not made admissible evidence by implication. (*Burdon* v. *Rickets*, 2 *Camp.* 121, n.; *sed vide R.* v. *The Inhabitants of Warley*, 6 *T. R.* 534).

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(2). Secondary Evidence.

(2) Secondary evidence.

To admit of secondary evidence, it must be first shown that all the proper sources from which the primary or best evidence can be procured are exhausted. And it is an established rule, that where there are duplicate originals, all the originals must be accounted for before secondary evidence can be given of any one. (*Per Parke*, B., in *Alwin* v. *Furnival*, 1 *Cr. M. & R.* 292).

It has been said, that if the best evidence cannot be produced, that then the best secondary evidence must be so. Thus, if an original deed be lost, the counterpart may be read; and if there is no counterpart, then a copy; and if there be no copy, then parol evidence may be admitted. (*See Villiers* v. *Villiers*, 2 *Atk.* 71; *B. N. P.* 254). But the better opinion seems to be, that there are no degrees of secondary evidence; and where a party is entitled to give secondary evidence at all, he may give any species within his power. (*Doe* v. *Ross*, 7 *M. & W.* 102; 8 *Dowl.* 389, S. C.; *and see Brown* v. *Woodman*, 6 *C. & P.* 206). But if the party giving such evidence appears to have better secondary evidence in his power, which he does not produce, that is a fact to go to the jury; from which they might sometimes presume that the evidence kept back would be adverse to the party withholding it. (*Id.* 106, *per Lord Abinger*, C. B.)

Where there are two instruments executed as parts of a deed, one of these parts is more authentic and satisfactory evidence of the contents of the other parts than any other draft or copy. It is prepared with more care than any other copy; and the party who produces it, and against whom it is used, by taking and keeping it as a part of the deed, admits its accuracy. The courts have, therefore, always required that, if one part of a deed be lost, and another part be in existence, it must be produced, or shown to be in the hands of the opposite party; and then on his refusing to produce, on notice, a copy may be received. (*See per Best*, C. J., *Munn* v. *Godbold*, 3 *Bing.* 295; *and see R.* v. *Hunter*, 4 *C. & P.* 128).

Where the originals of any papers are public documents, as the Journals of Parliament, records, proceedings of a court of justice, or of entries in court rolls, or in public books or registers examined, copies may, for public convenience, be always received as evidence (*a*). (*Man* v. *Carey*, 3 *Salk.* 155; 2 *Hawk.* c. 46, s. 78). Thus, a copy of an entry in the books of the Stamp Office, of payment of legacy duty, was held to be sufficient evidence of the fact of such payment; but the copy must be proved by affidavit of a person who has examined it. A copy signed by the comptroller of stamp duties is not sufficient. (*Harrison* v. *Berwell*, 4 *Jur.* 245—V. C.)

To make a copy of a record admissible in evidence, it is not enough that it was held by witness while another read the original to him.

(*a*) This doctrine would seem not to apply to the case of every official memorandum, and perhaps not to every species of public record; but it appears to embrace the proceedings of all courts, whether superior or inferior, and whether of record or not. It will be seen that the like documents may sometimes be proved by office copy, or copy by authorized officer. (*Vide Phil. on Ev.* 452 (1)).

There must be a change of hands, or the witness must himself read the copy with the original. (*Slane Peerage*, 5 *Cl. & F.* 23).

2. *Degree and kind of proof*

Notice to produce.

Notice to produce.]—In general, when the best written evidence is in possession of the opposite party, he or his attorney must be served with a notice to produce it, and the service of such notice must be proved before secondary evidence thereof is admissible. (*Attorney-General* v. *Le Merchant*, 2 *T. R.* 201, n.)

When necessary or not.

There are *five* descriptions of cases, where a notice to produce is not necessary; *first*, where the instrument produced and that to be proved are duplicate originals. (*Burleigh* v. *Stibbs*, 5 *T. R.* 465; *Roe* v. *Davis*, 7 *East*, 363; *Bowman* v. *Manzelman*, 2 *Camp.* 315; *Colling* v. *Treweek*, 6 *B. & C.* 398; *R.* v. *Watson*, 2 *Stark.* 130; *R.* v. *Hunt*, 3 *B. & A.* 566; *Bartholomew* v. *Stephens*, 8 *C. & P.* 728; *R.* v. *Moors*, 6 *East*, 412; *Phillipson* v. *Chase*, 2 *Camp.* 110). *Secondly*, where the instrument to be proved is a notice to quit (2 *B. & P.* 41), or a notice of dishonour of a bill. (*Kine* v. *Beaumont*, 3 *B. & B.* 288; *Colling* v. *Treweek*, 6 *B. & C.* 398; *Ackland* v. *Pearce*, 2 *Camp.* 601; *Roberts* v. *Bradshaw*, 1 *Stark.* 28; *Langdow* v. *Hulls*, 5 *Esp.* 157.) Notice of action to magistrate, and demand of copy of warrant from constable. (2 *B. & P.* 39). This last rule is founded, apparently, upon the convenience of general practice. *Thirdly*, where, from the nature of the proceeding, the opposite party must be aware that he is charged with the possession of the instrument, as in an indictment for stealing, or in an action of trover for a bill or bond, &c. (*R.* v. *Aicles*, 1 *Leach*, 330; *R.* v. *Moors*, 6 *East*, 421; *R.* v. *Ellins*, *R. & R. C. C.* 188; *R.* v. *Hunt*, 3 *B. & Al.* 566; *Colling* v. *Treweek*, 6 *B. & C.* 398). *Fourthly*, where the opposite party has procured the possession of the instrument by fraud, as where he has received it after the commencement of the action, from a witness called for the purpose of producing it under a *subpœna duces tecum*. (*Leeds* v. *Cook*, 4 *Esp.* 256). And, *fifthly*, where the notice is fixed to the realty. (*Jones* v. *Tarleton*, 9 *M. & W.* 675; *ante*, 365). In these cases secondary evidence of the instrument may be given, although no notice to produce be served.

Form of.

A parol notice will suffice, but it is better to give a written one. (*Smith* v. *Young*, 1 *Camp.* 440). The notice must specify the instrument, with a particularity sufficient to inform the opposite party which he is called on to produce. (*See France* v. *Lucy*, *R. & M. C. N. P.* 341; *Jones* v. *Edwards*, *M'C. & Y.* 139). In an action for work and labour, a notice to produce "all accounts relating to the matters in question in this cause," is sufficient to let in secondary evidence of an account of work done, given by the plaintiff to the defendant without specifying it by date or otherwise. (*Rogers* v. *Custance*, 2 *M. & Rob.* 179). Whether the notice to admit contains a saving of all just exceptions or not, the opposite party is entitled to rely on any valid objection to the documents mentioned in the notice. (*Sharpe* v. *Lamb*, 3 *Per. & D.* 454).

Time of service.

The notice must be proved to have been served a reasonable time before the time the party is required to produce the instrument. Such must depend on the circumstances of each case. When the commission day was the 15th of the month, and the prisoner who was in gaol on charge of arson, was on the 18th served with notice to produce his policy of insurance, his residence being ten miles from the assize town, such notice was at the trial, which came on on the 20th, it was held too late. The notice should be served before the commission-day, in cases where the party does not reside at the assize town. (*R.* v. *Elliscombe*, 5 *C. & P.* 522; 1 *M. & Rob.* 260, S. C. *See Doe* d. *Wartney* v. *Grey*. 1 *Stark. N. P. C.* 283; *R. & M. C. N. P.* 327; *id.* 47).

A notice to produce a letter from the defendant to the plaintiff, served on the plaintiff's attorney at a quarter before nine on the night before the trial, is too late. (*Holt* v. *Miers*, 9 *Car. & P.* 191).

2. *Degree and kind of proof.*

A notice to produce served on the party himself a week before the trial is in sufficient time, although he has employed an attorney in the cause. (*Hughes* v. *Budd*, 8 *Dowl. P. C.* 315).

If a notice to produce has been duly served on a party in the cause, that is not invalidated by a subsequent bad service of notice on the attorney. Service of a notice to produce on a Sunday is bad. (*Ib.*)

A cause was tried at the assizes on a Monday, the commission day being on the Thursday before. A paper was called for under a notice to produce, which was served on the Saturday before the trial. The attornies on whom the notice to produce was served, and also the party who was their client, lived in the assize town. Such service of the notice to produce was held not too late, and the question in such cases is, whether, under all the circumstances, reasonable notice has been given. (*Firkin* v. *Edwards*, 9 *Car. & P.* 478). In a town cause, service of a notice to produce a paper that would be in the hands of the opposite attorney at 8 p. m. on the evening before the trial, at his office, on one of his clerks, who had the management of the case, was held not too late; and the paper not being produced, secondary evidence was allowed to be given of its contents. (*Gibbons* v. *Powell*, 9 *Car. & P.* 634).

Where none of the parties lived in the assize town the plaintiff's attorney served the defendant's attorney, in the assize town, on the commission day, with notice to produce a paper, and offered the expenses of going to fetch it; and the defendant's attorney said, that that was of no use, as the paper was not in existence. The plaintiff was permitted on the trial to give secondary evidence of the contents of the paper, as the statement of the defendant's attorney, that the paper was not in existence, got rid of any objection as to the lateness of the service of the notice to produce. (*Foster* v. *Pointer*, 9 *Car. & P.* 718).

Notice to produce letters was served four days before the trial. The letters had been written to a partner in New South Wales; but proceedings having taken place in Chancery in respect of the subject-matter of the letters six years before the trial, the court considered they must be presumed to have been sent back from New South Wales, and that the notice was therefore sufficient to let in secondary evidence. (*Sturge* v. *Buchannan*, 2 *Per. & D.* 673; 10 *Ad. & Ell.* 598).

It is said that neither party will be allowed to inquire into the contents of an instrument, merely because the opposite party has the original in court at the time of the trial, and that the opposite party may object to secondary evidence of its contents, on account of his not having had notice to produce it. (1 *Phill. Evid.* 425; 1 *Stark. Evid.* 362; *Roscoe*, 3.)

Although a judge's order has been made on the plaintiff to admit a copy of a letter from himself to the defendant, and the plaintiff has also had notice to produce the original, the copy cannot be read, unless evidence is given of the existence of the original. (*Sharpe* v. *Lamb*, 3 *Per. & D.* 454; 11 *Ad. & E.* 805).

Existence of original in possession of opposite party.

After proof of the service of the notice to produce, the party must give some evidence of the opposite party's possession of the instrument required to be produced before secondary evidence can be given of it. Slight evidence of such possession will suffice, where the instrument belongs exclusively to the party possessing it. (*See Henry* v. *Leigh*, 3 *Camp.* 502).

In an action against the directors of an intended company, evidence, (in order to let in secondary evidence of their minute-books, called for under a notice to produce), that, four months before the trial, the late secretary had the books in a desk at the office of the company, and that he then gave up the key of the desk to the manager of the company, who acted for the directors—was held sufficient. (*Bell* v. *Francis*, 9 *Car. & P.* 66).

And a document deposited in a court of equity by a party to a suit there, and scheduled in his answer, but which remains with an officer of that court after an order to deliver it to the party, is sufficiently in the control and power of such party to let in secondary evidence after notice to produce, and non-production thereof by the party. (*Bush* v. *Peacock*, 2 *M. & Rob.* 162).

(2). *Degree and kind of Proof.*

Loss of instrument.

Loss of Instrument.]—Where the written instrument containing the best evidence is proved to have been lost or destroyed, secondary evidence thereof will be admitted in criminal as well as in civil proceedings. (*R.* v. *Chadwick*, 6 *C. & P.* 181). Thus upon a bill against two obligors in a bond, which had been destroyed by mistake, a correspondence by one obligor, stating the destruction of the bond, and that it was by mistake, is admissible evidence against the other obligor. (*Crosse* v. *Bedingfield*, 5 *Jur.* 836). The steward of a manor proved, that, where a surrender was by power of attorney, the practice was, to keep the power of attorney within the court-rolls. The power in question, which was for a surrender in 1814, could not be found either with the court-rolls or any where in the office in which the court-rolls had been kept ever since 1814, both by the present steward and his predecessor, who was steward in 1814, and was therefore allowed to be proved by secondary evidence (*Doe* d. *Counsell* v. *Capperton*, 9 *Car. & P.* 112). To prove the warrant of distress made by the mayor of a borough under 5 & 6 Will. IV. c. 76, for the non-payment of borough rates, the high constable of the borough, who had been served with a *subpœna duces tecum*, was called; and having stated that he had deposited the warrant in his office, that he had searched for it but could not find it; that he did not know what had become of it; and that the town-clerk had access to his office, secondary evidence was permitted to be given of its contents. (*Fernley* v. *Worthington*, 1 *Man. & G.* 491). In an action brought by a corporation, it appeared that the defendant had presented a petition to the Vice-Chancellor to allow the production of the corporation books which had been deposited in the Master's office on the present trial, which petition was opposed by the present plaintiffs, and dismissed with costs. Under these circumstances, the defendant was allowed to give parol evidence of the contents of the books. (*Ludlow* (*Mayor, &c.*) v. *Charlton*, 9 *Car. & P.* 242; *and see Reg.* v. *Inhabs. of Pembridge*, 1 *Car. & M.* 157).

What search for sufficient.

But it must previously be shewn that diligent search and inquiries have been made after the instrument sought to be proved; and such search and inquiries must be shewn to have been made in those places, and of those persons, where some account of the instrument most probably could be procured. The degree of diligence to be used in searching for a deed must depend on the importance of the deed, and the particular circumstances of the case. (*Gully* v. *Bishop of Exeter*, 4 *Bing.* 290). Where the loss or destruction of the instrument may almost be presumed, very slight evidence of its destruction or loss will suffice. (*Per Abbott*, C. J., *Brewster* v. *Sewell*, 3 *B. & Al.* 296. *See Rex* v. *East Farleigh*, 6 *D. & R.* 153). In an action for maliciously, and without probable cause, charging plaintiff with an assault before a magistrate, the magistrate proved that the depositions taken before him were reduced into writing, and that he delivered them, at the court of quarter sessions, to the clerk of the peace or his deputy. The clerk of the peace stated, that a bill of indictment for the assault was preferred, and that the grand jury returned *ignoramus*, and that it was usual, in such case, to throw away or destroy the depositions; that he had searched among his papers, and could not find them: it was held, that parol evidence of their contents was admissible, and that it was not necessary to call the deputy clerk of the peace to shew that the original depositions were not in his possession, inasmuch as it was his duty, if he had received them, to have delivered them to his

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principal; and not being in his custody, it was to be presumed that they were lost or destroyed. (*Freeman* v. *Arkell*, 2 *B. & C.* 494; 2 *D. & R.* 669, S. C.) Where it appeared that an indenture of apprenticeship, twenty-four years old, the expenses of which the overseers of a parish had paid, was sent to those overseers, and was not to be found in the parish chest, it was held that it might be presumed to be lost, and that secondary evidence of its contents was admissible. (*R.* v. *Stourbridge*, 1 *M. & R. M. C.* 297; 8 *B. & C.* 96; 2 *M. & Ry.* 43, S. C.) The question of diligent search is, it seems, for a jury. (*Bampton* v. *Paulin*, 4 *Bing.* 264). Where the publisher of a paper, in which a libel had appeared, stated that he believed the original was either destroyed or lost, having been thrown aside as useless, this was held sufficient to let in secondary evidence. (*Rex* v. *Johnson*, 7 *East*, 66). Where on the second trial of a cause, a witness stated that he had on the argument for the new trial handed a document to one of the learned judges, and had not since seen it or had been able to find it, secondary evidence was received of its contents, without any search for it having been made at the judge's chambers, the presumption being that the judge had returned it to the party. (*Deacon* v. *Fuller*, 6 *C. & P.* 74). Where, in a settlement case, it was proved that one part of an indenture had been executed, that the pauper and master were both dead at the time of the trial, and that an inquiry for it had been made of the pauper shortly before his death, who said that the indenture had been given up to him after the expiration of the apprenticeship, and that he had burnt it, and that an inquiry had also been made of the daughter and sole executrix of the master, who said she knew nothing about it; it was held that a sufficient inquiry had been made to render secondary evidence of the contents admissible. (*Rex* v. *Morton*, 4 *M. & Sel.* 48). Where, however, it appeared that there were two parts of an indenture of apprenticeship, one of which had been destroyed, and the other delivered to A. B., to whom the pauper had been assigned, and that application had been made to A. B. (but who was not called), who said she could not find the indenture, and did not know where it was, the search was held not sufficient. (*R.* v. *Castleton*, 6 *T. R.* 236).

A party objecting to the production of a copy, on account of due search not having been made for the original, must make the objection at the time of the trial distinctly on that ground; if he does not, the court will not afterwards entertain it. (*William* v. *Wilcox*, 8 *Ad. & E.* 314).

What copy sufficient.

With respect to what copy is sufficient, it must be one proved to have been examined with the original, and to be a true copy. A rough draft will do. (*R.* v. *Hunter*, 4 *C. & P.* 128). In *Waller* v. *Horsfall*, (1 *Camp.* 503), it is said a copy of the original is good, but not a copy *from* the original. To make a copy of a record admissible in evidence, it is not enough that it was held by witness while another read the original to him. There must be a change of hands, or the witness must himself read the copy with the original. (*Slane Peerage*, 5 *Cl. & F.* 23). A copy of an entry in the books of the Stamp Office of payment of legacy duty, is sufficient evidence of the fact of such payment; but the copy must be proved by affidavit of a person who has examined it. A copy signed by the Comptroller of Stamp Duties is not sufficient. (*Harrison* v. *Berwell*, 4 *Jur.* 245). An examined copy of an entry in the Middlesex registry of deeds is, it seems, secondary evidence of the deed of which it purports to be the registry. (*Collins* v. *Maule*, 8 *Car. & P.* 502; *Reg.* v. *Inhab. of Pembridge*, 1 *Car. & M.* 157). In Batavia, charter parties are entered into by the instrument being written in the book of a notary, (he being a public officer according to the Dutch law which prevails in Batavia), and there signed by the parties. The notary makes copies, which he signs and seals, and which the principal officer of the government of Java signs upon proof of their being executed by the notary. Then one copy is delivered to each

(2). *Parol.*

party. In the courts of *Java*, in order to prove the charter party, it is necessary to produce the notary's book, but this book is never allowed to be taken out of Java; and in Dutch courts out of Java faith is given to the above copies as to an original. In *English* courts however such copies are not receivable either as originals or as secondary evidence of the charter party, or at all events, not without proof that they were made at the time of entering into the original charter party, and in the presence of the parties. (*Brown* v. *Thornton*, 6 *Ad. & E.* 185; 1 *Nev. & Per.* 339, S. C.) A commission to examine witnesses was directed to the judges of the Chamber of Commerce at Hamburgh. The evidence having been returned as an extract from the *records* of the Court, was considered inadmissible, as it purported to be a copy, and was not the examination itself. (*Clay* v. *Stevenson*, 2 *Nev. & Per.* 189; 7 *Ad. & E.* 185, S. C.) In an action for bribery at a borough election, an examined copy of the precept to the returning officer, taken from the original at the crown office, is sufficient evidence of the precept. (*Webb* v. *Smith*, 4 *Bing. N. C.* 373; 6 *Scott*, 147). A copy taken by a copying machine is not evidence without notice to produce the original. (*Nodin* v. *Murray*, 3 *Camp.* 228; *and see R.* v. *Watson*, 2 *Stark.* 129). When possession has gone along with a deed for many years, the original of which is lost or destroyed, an old copy or abstract may be given in evidence, although not proved to be true, because it may be impossible to give better evidence. (*B. N. P.* 254).

Parol evidence in contradiction or explanation of written evidence.

Parol Evidence, when admissible when there is Written Evidence.]—We have already seen that parol evidence, being inferior to written evidence, cannot, in general, be received instead of it; *ante*, 362. Besides this, parol evidence cannot in general be adduced in contradiction to the written evidence, although, indeed, it tend to shew the real intention of the parties, (*5 Co.* 26); nor can it be adduced to show the invariable usage of trade, (1 *Phillips, Evid.* 539; *Cutter* v. *Powell*, 6 *T. R.* 320), or custom of the country, (*Webb* v. *Plummer*, 2 *B. & Al.* 746), in violation of the particular terms of the written instrument. (*Chit. jun. Contr.* 22).

Evidence may be received to explain deeds or instruments where there is a *latent* ambiguity, but not where there is a *patent* ambiguity. By a *latent* ambiguity is intended, that which does not appear upon the face of the instrument, where every thing seems right and clear; but, the meaning having been rendered uncertain by parol proof of some fact, the law permits the removal of the doubt by the like evidence. (*Peake's Ev.* 112). By a *patent* ambiguity is meant that which is apparent on the face of the instrument. (*See Stark. Ev. Part IV.* 1000).

Where there was a devise to her cousin I. C., and there were two of that name, evidence was admitted to show which of the two was meant, for the ambiguity was latent. (*Peake's Ev.* 112; *Doe* d. *Morgan* v. *Morgan*, 1 *C. & M.* 235).

So where a fine is levied of the manor of D., the conusor having two manors of that name, evidence may be given to show which was meant. (*Peake's Ev.* 113).

So where from the terms of the deed its intent as to its nature is equivocal; for instance, whether it is to enure as a contract of apprenticeship, or only as an agreement to be a mere servant, evidence is admissible to show the intent of the parties, and that some act was done further than that stated in the deed, though forming a part of the same transaction. (*Rex* v. *Laindon*, 8 *T. R.* 379; 1 *Phill. Ev.* 544).

In articles of agreement between the bankrupt and the petitioners, reciting that the bankrupt had agreed to give to them a mortgage on "his freehold estates at Iver," and to execute a good and effectual mortgage to the petitioners of "all his lands, tenements, and hereditaments, at or near Iver aforesaid:" the intent of the bankrupt to give a general charge upon copyhold, as well as freehold property, was

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In contradiction or explanation of written evidence

allowed to be explained by other written memoranda of agreement. (*Ex parte Glyn, re Medley*, 1 *Mon., D. & D.* 29).

Devise to J. A., the grandson of my brother, in fee, charged with 100*l.* to each and every of the brothers and sisters of J. A. After it had been shown that the brother of the testatrix had two grandsons named J. A., the one with several brothers and sisters, and the other with only two brothers and one sister, the evidence was admitted of a declaration by the testatrix, some months after making her will, that she had devised the property in question to the J. A. who had only two brothers and one sister. (*Doe* v. *Allen*, 4 *Per. & D.* 220). In another case, on a devise to M. B., widow, for life, and her three daughters, Mary, Elizabeth, and Ann, in fee, an illegitimate daughter, named Elizabeth, having claimed as being the only Elizabeth answering the description at the time of the will being made, as the legitimate daughter, Elizabeth, had been dead six years previously, parol evidence was admitted to shew that the testator intended his legitimate daughter as devisee, and that he did not know of her death. (*Doe* d. *Thomas* v. *Beynon*, 4 *Per. & D.* 193).

Where a testator devised lands to his son, John H., for life; and from his decease, to the testator's grandson, John H., eldest son of the said John H., for life; and on his decease, to the first son of the body of his said grandson, John H., in tail male, with other remainders over. At the time of making the will, the testator's son, John H., had been twice married: by his first wife he had one son, Simon; by his second wife an eldest son, John, and other younger children, sons and daughters, evidence of the instructions given by the testator for his will, and of his declarations, was held inadmissible to show which of these two grandsons was intended by the descriptions of the will. (*Doe* d. *Hiscocks* v. *Hiscocks*, 5 *Mee. & W.* 363).

Parol evidence is admissible to show that a written contract, purporting to be made between A. and B., as seller and buyer, was in fact made by B., not on his own account, but as agent for a third person, so as to *charge* such third person as principal; (*Wilson* v. *Hart*, 7 *Taunt.* 295; 1 *Moore*, 45, S. C.; 1 *Phill. Ev.* 542); but such evidence would not be received for the purpose of *discharging* B. from the liability he incurred by entering into a written contract in his own name. (*Higgins* v. *Senior*, 8 *M. & W.* 834).

Parol evidence cannot be admitted to contradict the terms of *a deed;* as in case of a lease to show that the lessee is to pay a given sum to a ground landlord, the lease only stipulating for payment of a sum certain to the lessor. (*Peake's Ev.* 122).

So the acknowledgment in a deed of the receipt of money is conclusive evidence as between the parties to it of such receipt. (*Baker* v. *Dewey*, 1 *B. & C.* 704; *Rowntree* v. *Jacob*, 2 *Taunt.* 141; *Flinn* v. *Callow*, 1 *M. & G.* 589). But in a subsequent case it has been held, that it may be rebutted by evidence of *some subsequent and distinct circumstance;* as, for instance, if a cheque were given at the executing of the instrument, and it were dishonoured on presentment. (*Deverell* v. *Whitmarsh*, 5 *Jur.* 963; *and see Doe* d. *Salt* v. *Carr*, 1 *Car. & M.* 123).

Where a contract must be in writing by statute, parol evidence cannot be received to waive or vary any of its terms. But if it be valid without writing, it may, though written, be altered or waived before breach by a subsequent parol agreement. (*Goss* v. *Lord Nugent*, 5 *B. & Ad.* 58; *Marshall* v. *Lynn*, 6 *M. & W.* 109; *Stead* v. *Dawber*, 10 *Ad. & Ell.* 57). Nor is parol evidence admissible to alter the legal effect of a written instrument; (*Greaves* v. *Ashlin*, 3 *Camp.* 426; *Macdougall* v. *Robertson*, 1 *M. & P.* 147); as, if no time is mentioned in an agreement as to when it is to take effect, the law declares that it shall take effect immediately, and parol evidence is not receivable to shew the contrary. (*Williams* v. *Jones*, 5 *B. & C.* 108; 8 *D. & R.* 548, S. C.)

It seems doubtful, where no consideration is expressed in an instru-

ment, whether a consideration may be proved. (*See Mildmay's case*, 1 *Rep.* 176 a; 1 *Ves.* 128; *Villers* v. *Beamont*, *Dyer*, 146 a; *Rex* v. *Inhabitants of Scammonden*, 3 *T. R.* 474, *aff.*; *Morley* v. *Boothby*, 3 *Bing.* 112; *Lees* v. *Whitcomb*, 5 *Bing.* 34, *sembl. neg.*) In a settlement case, where the deed of conveyance stated the consideration of the purchase to be 20*l.*, parol evidence was admitted to shew that the consideration was in fact 30*l.* (*Rex* v. *Scammonden*, 3 *T. R.* 474; *Rex* v. *Cheadle*, 3 *B. & Adol.* 833).

(3). *Presumptive.*

Parol evidence of usage or custom is frequently admissible to explain the meaning of the parties, when not definitively expressed on the face of the written instrument; (*Palm.* 211; *Wigglesworth* v. *Dallison*, *Dougl.* 201; *Webb* v. *Plummer*, 2 *B. & Al.* 746); and, especially in the construction of mercantile contracts, parol evidence may be admitted to show the sense in which, according to the usage and custom of merchants, the contract was made. (*See Jeffries* v. *Legandra*, 2 *Salk.* 443; *Lethulier's case*, *id.*; *Park*, *Ins.* 416; *Whitlock* v. *Underwood*, 2 *B. & C.* 160). In an action upon a sold note, in the following terms—"Sold to Mr. W. S., eighteen pockets Kent hops, viz., ten pockets Burton East Kent, eight pockets Springall Goodhurst, at 100*s.*;" parol evidence is admissible either to supply the term "cwt.," or to shew that the term "pocket" was intended to mean cwt. (*Spicer* v. *Cooper*, 1 *Gale & D.* 52). But parol evidence of the course of dealing is not admissible to show that a sale was on credit where the written contract is silent upon that point. (*Ford* v. *Yates*, 2 *Scott*, *N. R.* 645). So in the construction of ancient charters and deeds, &c., their construction may be asserted by parol evidence of usage. (2 *Inst.* 282; *Rex* v. *Varlo*, *Cowp.* 248; *Chad* v. *Tilsed*, 2 *B. & B.* 406; *Attorney-General* v. *Parker*, 3 *Atk.* 576; *Weld* v. *Hornby*, 7 *East*, 199; *Withnell* v. *Gartham*, 6 *T. R.* 398).

As to when parol evidence is admissible to shew the contents of, or to add to, depositions, *see post*, 408.

Parol evidence is always admissible to prove a fraud. (*See B. N. P.* 173; *Dobell* v. *Stevens*, 3 *B. & C.* 623; 5 *D. & R.* 490, S. C.; *Doe* d. *Small* v. *Allen*, 8 *T. R.* 147; 2 *P. Wms.* 203; *Hill* v. *Manchester Water Works Company*, 2 *B. & Adol.* 544).

(3). Presumptive Evidence.

(3) Presumptive evidence.

Many times juries are much induced to rely upon presumptions, whereof there are three sorts; violent, probable, and light or temerary. *Violent presumption* many times amounts to full proof; as if one be run through the body with a sword in a house, whereof he instantly dieth, and a man is seen to come out of that house with a bloody sword, and no other man was at that time in the house. *Probable presumption* moveth little; but *light* or *temerary presumption* moveth not at all. (1 *Inst.* 6; 3 *Blac. Com.* 371; *Gilb. Evid.* 157).

On an indictment for larceny, proof that a part of the stolen goods have been found upon the person of the prisoner, or in his house or possession, is presumptive evidence against him of his having stolen them, so as to call upon him for his defence; and may be sufficient to warrant a conviction, if no facts appear in evidence to repel that presumption. The goods are sometimes found in the prisoner's house before his apprehension; frequently found afterwards; and there can be no objection to proof of their being found at one time or the other. This kind of evidence is frequently strengthened materially by other circumstances, as by proof that about the time of the offence the prisoner was near the spot from which the goods were taken, or that he gave some false account respecting the goods on being charged with the crime, or endeavoured to conceal them, or perhaps tried to prevent an inspection, or by some other proof of suspicious circumstance in his behaviour. On the other hand, the inference, arising from the mere fact of possession, will be much weakened, if any considerable time has elapsed be-

(4). *Hearsay.*

tween the loss of the property and the finding of it again, (*see* 2 *C. & P.* 459), or if the property was from its nature likely to pass in the interval through many hands; especially where the prisoner betrayed no appearance of guilt at the time of his apprehension. (1 *Phill. Evid.* 7 ed. 168, 169; *see* 2 *East's P. C.* 656, 657).

Where the knowledge of the defendant of the nature of his conduct is the point in issue, as where he is charged with uttering a forged note, knowing it to be forged, evidence of his having committed a series of acts of the same description may be received as presumptive of knowledge. (*Rex* v. *Ball*, 1 *Camp.* 324; 2 *Leach*, 983, 987; *Rex* v. *Wylie*, 1 *New Rep.* 92; *Rex* v. *Hough*, *Russ. & R. C. C.* 120, 132, 245; *R. & M. C. C.* 148).

So it is of a charter of feoffment, if all the witnesses to the deed be dead (as no man can keep his witnesses alive, and time weareth out all men), then violent presumption, which stands for a proof, is continual and quiet possession. Also the deed may receive credit from a comparing of seals, writing, and the like. (1 *Inst.* 6. *See Doe Wilkins* v. *Cleveland, Marquis*, 9 *B. & Cres.* 864).

Primâ facie, it must be presumed that the books of a corporation, which existed before the Municipal Reform Act, are in possession of the new corporation which succeeded them under that act; but if it be shewn that the old corporation, before their dissolution, deposited them with a banker, and that from his hands they passed into the Master's office of the court of Chancery, this rebuts the presumption. (*Ludlow* (*Mayor, &c.*) v. *Charlton*, 9 *Car. & P.* 242).

Where no acts of ownership have been exercised by the party beneficially interested in an estate devised in trust, a reconveyance by the trustees cannot be presumed. (*Doe* d. *Rees* v. *Williams*, 1 *Jur.* 755).

As to the presumption of rights of way, see "*Highways*," *Vol. III.*)

The death of a party will be presumed, if he has not been heard of for seven years or more. But there is no legal presumption as to the time of his death. (*Doe Knight* v. *Nepean*, 5 *B. & Adol.* 86; S. C. in error, 2 *M. & W.* 894; *Doe* v. *Jesson*, 6 *East*, 84; *Doe Lloyd* v. *Deakin*, 4 *B. & Al.* 433). And after the lapse of even a much shorter period, the law will not presume the person to be alive if the effect of such presumption is to render a third party guilty of an illegal act. Thus where a woman married a second time, her first husband having left the country only twelve months previously, she will not on that account be presumed to have been guilty of bigamy. (*Rex* v. *Twyning*, 2 *B. & Al.* 386). In a late case it was held, that after one hundred years, the death of a party without issue would be presumed. (*Doe* d. *Oldham* v. *Wolley*, 8 *B. & Cres.* 22). Proof that a person sailed in a ship, bound for the West Indies, two or three years ago, and that the ship has not since been heard of, is presumptive evidence that the person is dead; but the time of the death, if material, must depend on the circumstances of the case. (*See Watson* v. *King*, 1 *Stark. C. N. P.* 121; *Doe Knight* v. *Nepean*, 5 *B. & Adol*, 86; S. C. in error, 2 *M. & W.* 894; *and see Sillick* v. *Boothe*, 5 *Jur.* 1151, *Id.* 958).

Twenty years' regular usage, uncontradicted and unexplained, is cogent evidence for a jury to presume, that a custom for a steward of the manor to nominate a jury to serve on the court leet, at the election of the mayor of a borough, is an immemorial custom. (*Rex* v. *Joliffe*, 3 *D. & R.* 240; 2 *B. & C.* 54, S. C.)

In trover for goods, where the defence was, a purchase in market overt in the city of London, the court presumed, after verdict (no question having been made of it at the trial), that one of the parties to the sale was a freeman of the city. (*Lyons* v. *Depass*, 3 *Per. & D.* 177; 9 *Car. & P.* 68).

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(4). Hearsay evidence.

In general, that which another asserts must be by oath in a court of justice; and no one will be permitted to come into such court, and say,

upon his oath, that he heard such a one declare certain facts to have occurred; but he who makes the declaration must himself repeat it upon his oath. And this is that which is termed hearsay evidence, *viz.* the deposing on oath, that certain facts *exist*, which facts are only known to the deponent by the relation of some other person. (*See* 1 *Phill. Evid.* 7 ed. 229; 2 *Hawk.* c. 46, s. 46; *Bull. N. P.* 294; *Stark. Evid. Part I.* 40—47; *Roscoe*, 15; *per Bayley*, J., *in Spargo* v. *Brown*, 9 *B. & Cres.* 938).

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In the *Queen's* case it was held, that if, upon the trial of an indictment, it appear upon cross-examination of one of the witnesses for the prosecution, that J. S. was employed by the prosecutor for the purpose of procuring and examining evidence and witnesses in support of the indictment, the defendant cannot give evidence of J. S.'s having offered a bribe to a certain person to induce him to give evidence touching the matter of the indictment, unless such person have been examined as a witness. (*The Queen's Case*, 2 *Brod. & Bing.* 302).

Hearsay pedigree, births, marriages, &c.

Pedigree, Births, Marriages, &c.]—On inquiring into the truth of facts which happened a long time ago, the courts have varied from the strict rules of evidence applicable to modern facts of the same description, on account of the great difficulty of proving those remote facts in the ordinary manner, by living witnesses. On this principle, hearsay and reputation (which latter is the hearsay of those who may be supposed to have known the fact handed down from one to another) have been admitted as evidence in cases of pedigree. (*Per Le Blanc.*, J., in *Highman* v. *Ridgway*, 10 *East*, 120).

Thus declarations of deceased members of the family are admissible evidence to prove relationship; as, who was a person's grandfather, or whom he married, or how many children he had, or as to the time of a marriage or of the birth of a child, and the like, of which it cannot be reasonably presumed that better evidence is to be procured. (1 *Phill. Evid.* 7 ed. 238). And the declarations of a deceased relative are admissible, notwithstanding that if he was alive he would stand in *pari jure* with the party on whose behalf such evidence is tendered, and have the same right to recover. (*Doe Tilman* v. *Turner*, *R. & M. C. N. P.* 141).

So hearsay declarations on a question of pedigree are admissible to prove the identity of the party. (*Reg.* v. *St. Mildred's, Canterbury*, 2 *Jurist*, 46, *Q. B.*) But the declarations of an illegitimate member of a family respecting his illegitimate brothers, are not admissible as reputation. (*Doe* d. *Bamford* v. *Barton*, 2 *M. & Rob.* 28).

Declarations of servants and intimate acquaintances are not admissible evidence in questions of pedigree. (*Johnson* v. *Lawson and another*, 2 *Bing.* 86; 9 *B. Moore*, 183, S. C.; 1 *Phill. Evid.* 240, 7 ed.)

Nor is hearsay evidence by a pauper of the declarations of his deceased putative father, as to the *birth-place* of the pauper admissible. (*Rex* v. *Erith*, 8 *East*, 539; *see Roscoe*, 15).

A written memorandum by a deceased man-midwife, stating that he had delivered a woman of a child on a certain day, and referring to his ledger, in which a charge for his attendance was marked as paid, was thought by the Court of King's Bench to have been properly received in evidence, upon an issue as to the child's age. This entry was made by a person who, so far from having an interest to make it, had an interest the other way: for it appeared distinctly, from other evidence, that the work charged was actually done; and the discharge in the book repels the claim which he would otherwise have had. (*Higham* v. *Ridgway*, 10 *East*, 109, 110; *see Whitnash* v. *Gifford*, 8 *B. & C.* 556; 1 *Phill. Evid.* 7 ed. 256).

It is no objection to the admissibility of an entry by which a deceased steward charges himself, that the balance of the account is in favour of the steward. (*Williams* v. *Graves*, 8 *Car. & P.* 593).

On a question, whether a testator at the time of making his will was of full age, a written memorandum by his deceased father, stating the

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time of his birth, has been admitted to be good evidence. (*Herbert* v. *Tuckall*, *T. Raym.* 84, cited in *Brune* v. *Rawlins*, 7 *East*, 290).

And the declarations of a testator are admissible, when a will is disputed on account of fraud, circumvention, or forgery. (*Doe* d. *Ellis* v. *Hardy*, 1 *M. & Rob.* 525).

And the declarations of *deceased* persons, as to whether they were married, or whether the person in question was born before or after marriage, are evidence. (*Stevens* v. *Moss*, 2 *Cowp.* 591; *Doe Northey* v. *Harvey*, *R. & M. C. N. P.* 297).

Declarations made after a controversy or suit has arisen, with regard to the point in question, are inadmissible. (*Berkeley Peerage case*, 4 *Camp.* 401; 2 *Selw. N. P.* 712).

Declarations in the family descriptions upon monuments or gravestones, in Bibles and registry books, recitals in family deeds, engravings on rings, old pedigrees hung up in a family mansion, and the like (in which it is improbable that a description would be suffered to continue if erroneous), are all of them admissible, upon the principle that they are the natural effusions of a party who must know the truth, and who speaks upon an occasion when his mind stands in an even position, without any temptation to exceed or fall short of the truth. 1 *Phill. Evid.* 7 ed. 239).

Right of way, &c.

Ownership of Way, Estate, &c.]—In questions about *a right of way*, reputation, *i. e.* what old people deceased have said upon the subject, is good evidence. (*Bull. N. P.* 295). *And see post*, 377, "*Public Rights of Way.*"

Ownership of estate.

Whether a particular piece of land be parcel of an estate may be proved by declarations made by a deceased tenant while in possession. (*Bull. N. P.* 295.) A declaration by the owner or occupier of adjoining land, that his neighbour's land extends to such a spot, accompanying an act of forbearance to go beyond the spot for that reason, (or without such act, if he speaks against his interest), is evidence that the land extends so far. (*Sir T. Stanley* v. *White*, 14 *East*, 332, 339; 1 *Phill. Evid.* 163, 245). And the declaration of a deceased occupier of land, that he rented it under a certain person, is evidence of that person's seisin. (*Uncle* v. *Watson*, 4 *Taunt.* 16; *Doe* d. *Baggalley* v. *Jones*, 1 *Camp.* 367; *Doe Human* v. *Pettett*, 5 *B. & Al.* 225; 1 *Phill. Evid.* 7 ed. 258). But entries by a third person, deceased, in his books, of receipts of rent from his tenant for a particular estate, are not admissible to prove the identity of the land, in a cause between two others. (*Outram* v. *Morewood*, 5 *T. R.* 121; and see further as to this, *post*, 378). Where the question was, whether a slip of land between some old enclosures and the highway vested in the lord of the manor or the owner of the adjoining freehold, it was held, that evidence might be received of acts of ownership by the lord of the manor on similar slips of land not adjoining his own freehold in various parts of the manor. (*Doe Barrett* v. *Kemp*, 7 *Bing.* 332. *See Woolway* v. *Rowe*, 1 *Ad. & Ell.* 114).

In ejectment by parish officers to recover a cottage, entries in the books of a deceased tradesman of charges for the building of the cottage, which are there stated to have been paid by the lord of the manor, are not admissible in evidence on the part of the defendant. *Doe* d. *Haden* v. *Burton*, 9 *Car. & P.* 254.

Customs.

In cases of *custom*, reputation by deceased persons, as to the right, may be proved; but not to prove that they, the deceased persons, had said that they had seen certain facts take place, which amounted to an exercise of the right. (*R.* v. *Ereswell*, 3 *T. R.* 707).

Settlements.

Settlements.]—The deathbed declarations of paupers respecting their settlements are, it seems, evidence; and sometimes the general declarations of deceased paupers are evidence. (*R.* v. *Bury*, *Cald.* 481; *vide R.* v. *Ereswell*, 3 *T. R.* 707).

The owner of a house let to a pauper, having died before an appeal

against a removal, grounded on a settlement by tenancy, was heard, it was made a question whether a declaration made by him during the time the pauper occupied the house, that he had let it to him, and that another person had duly guaranteed the rent, could be received. (*R.* v. *Chediston*, 6 *D. & R.* 269; 4 *B. & C.* 230, S. C.)

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Hearsay evidence, from a wife, of the declarations of her husband, living abroad, respecting his settlement, are admissible when supported by slight circumstances. (*R.* v. *Wareham*, *Cald.* 141). So declarations of a husband to his wife, respecting his settlement, seem, after his death, to be admissible evidence; but if they refer to a written instrument, they cannot be received unless previous inquiry is shown to have been made after it. (*R.* v. *St. Sepulchre*, *Cald.* 547). A pauper's statement of what he has heard and believes as to the place of his birth, is within the rule excluding hearsay evidence, and insufficient to support an order for his removal. (*Reg.* v. *Lydeard St. Lawrence* (*Inhabs.*), 1 *Gale & D.* 191; *S. P.*, *Reg.* v. *Ecclesall Bierlow* (*Inhabs.*), 1 *Gale & D.* 160).

In an appeal, the respondents, in order to prove the fact of the delivery to them of a certificate given by the appellants, acknowledging the pauper to be their settled inhabitant, produced an old book from their own parish chest, in which was an entry of that fact in the handwriting of a former parish officer; it was held that such evidence was inadmissible. (*Rex* v. *Debenham*, 2 *B. & Al.* 185).

Public or general rights.

Public or general Rights.]—A *general* right may be proved by traditionary evidence; a *particular fact* cannot. (*Per* Ld. *Kenyon*, C. J., *in Outram* v. *Morewood*, 5 *T. R.* 123).

A right of ferry is a matter in which the public are interested, and as to which, therefore, reputation is evidence. (*Pim* v. *Curell*, 6 *Mee. & W.* 234).

A document drawn up at a meeting of the inhabitants of a township, and signed by them under a resolution to resist the repairs of a road, is evidence of reputation. (*Barraclough* v. *Johnson*, 3 *Nev. & Per.* 233; 8 *Ad. & E.* 99; S. C.) On an indictment for obstructing a highway to which defendant pleaded not guilty, a witness stated, that about forty years ago a deceased occupier of land over which the road passed, planted a willow near the road. The witness was then asked what the occupier said when he planted the willow. The witness answered, that the occupier said that he planted the willow to shew where the boundary of the road was when he was a boy. It was held, that the statement of the occupier was not receivable in evidence, on the ground that it was evidence of reputation, or as a declaration accompanying an act done, or as a declaration against the interest of the party making it. (*Reg.* v. *Bliss*, 2 *Nev. & Per.* 464; 7 *Ad. & E.* 550, S. C. *See* "*Highway*," *Vol. III.*)

Upon a question of boundary between two parishes and manors, whether a certain common was within the parish and manor of H. or the parish of B. and manor of M., evidence was admitted of what old persons, then dead, had said concerning the boundaries, though not as to particular facts or transactions. And this, though the old persons were parishioners, and claimed rights of common on the waste, which would be enlarged by their several declarations; there not appearing any dispute at the time respecting the right of such old persons. (*Nicholls* v. *Parker*, 14 *East*, 331, n.; *Barnes* v. *Mawson*, 1 *M. & Sel.* 81). But not so as to a boundary between two estates. (*Clothier* v. *Chapman*, 14 *East*, 331, n.) But where, on an issue as to the boundary of a tenement, evidence has been given that the boundary in question is the same with the boundary of a certain hamlet, evidence of reputation as to the boundary of that hamlet is then receivable as proof of a fact relevant to the issue. (*Thomas* v. *Jenkins*, 1 *Nev. & Per.* 587).

Where in trespass the question was whether certain land was in the parish of A. or parish of B., the land in B. being tithe-free, it was held

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that ancient leases granted by the ancestor of the landlord, in which the land was described as being in parish B., were admissible as evidence of reputation that the land was in that parish. Old rates made by the parish officers of B. on the occupiers of the land in question were also produced; and an account, containing an overseer's account, in which, against the sum for which the occupier of that land had been assessed, there were crosses made, were produced: it was held that these were evidence that the sums assessed had been paid by the tenants. (*Plaxton* v. *Dare*, 10 *B. & Cres.* 17).

Perambulations are evidence of the extent of a particular parish or manor. (*Woolway* v. *Rowe*, 1 *Ad. & Ell.* 114; *Weeks* v. *Sparke*, 1 *M. & Sel.* 687; 1 *Phill. Evid.* 7 *ed.* 284). On a question whether certain land be part of the plaintiff's estate, or waste of the manor, a perambulation of such manor by the lord, including the land in question, is evidence, as showing an assertion of ownership by the lord, though it be not proved that any person on behalf of the plaintiff was present at the perambulation or knew of it. (*Woolway* v. *Rowe*, 1 *Ad. & Ell.* 114).

Before a customary right can be proved by evidence of reputation, a foundation must be laid by showing acts of ownership, and then the evidence of reputation becomes admissible; such evidence being confined to what old persons, who were in a situation to know what these rights are, have been heard to say concerning them. (*Weeks* v. *Sparke*, 1 *M. & Sel.* 687; *Peake's Evid.* 15). Reputation is not evidence on an indictment against an individual for not repairing a bridge, *ratione tenuræ*. (*R.* v. *Antrobus*, 6 *C. & P.* 790).

Declarations as to boundaries or customs, &c., made *post litem motam*, are not admissible as evidence of reputation. (*R.* v. *Cotton*, 3 *Camp.* 444; 11 *Price*, 180; 1 *Phill. Evid.* 7 *ed.* 250).

Hearsay of persons having no interest to misrepresent.

Where Party has no Interest to misrepresent.]—In many cases, the declarations of *deceased* persons upon a fact which they were competent to know, and who have had no interest to misrepresent, or whose interest was to represent the other way, have been admitted in evidence; thus, if the obligee of a bond indorse on the back of it the payment of interest by the obligor, this will be evidence for the executors of the obligee to rebut the presumption of payment of the bond more than 20 years old. (*Gleadow* v. *Atkin*, 1 *C. & M.* 410; *and see Searle* v. *Lord Barrington*, 2 *Stra.* 826).

Entries by a deceased rector, or vicar, as to the receipt of ecclesiastical dues, are admissible for his successor, for he had no interest to misstate the fact. (2 *Gwill.* 529; 4 *Price*, 218). So, entries made by a deceased collector of rates, charging himself with the receipt of money, and made by him in the public books of his office, are admissible against his surety, to prove his receipt. (*Goss* v. *Watlington*, 3 *B. & B.* 132). And in *Middleton* v. *Melton* (10 *B. & Cress.* 317) it was held, that an entry made by a deceased collector of taxes, in a private book kept by him for his own convenience, whereby he charged himself with the receipt of sums of money, was evidence against a surety of the fact of the receipt of such money in an action on a bond conditioned for the due payment of the taxes by the collector, although the parties by whom the money had been paid were alive, and might have been called as witnesses; and that upon the general principle that the entry was to the prejudice of the party who made it. (*And see Whitnash* v. *Gifford*, 8 *B. & Cres.* 556; *Gow*, 227; *Doe Smith* v. *Cartwright*, *R. & M. C. N. P.* 62; *Roscoe*, 18, 19; *Doe* d. *Sturt* v. *Mobbs*, 1 *Car. & M.* 1).

To prove soil and freehold the entries made by a former steward of the manor in his day-book, of receipts of sums of money for trespasses committed upon the place in question, were held to be good evidence, as the steward thereby charged himself with the receipt of money; and these entries may either be in his handwriting, or in a book signed in his handwriting. And the rule is, that if a steward's entry be sufficient to charge himself, it is admissible evidence. (*Barry* v. *Bebbington*, 4

T. R. 514; *Doe* d. *Badenham* v. *Colcombe*, 1 *Car. & M.* 155). To make such entries by an agent evidence, it is not necessary they should be made by the agent if signed by him. (*Doe* d. *Litchfield, Earl*, v. *Stacey*, 6 *C. & P.* 139).

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To prove the fact of a surrender of an interest in an estate, the books of the attorney, since deceased, who had made an entry of having prepared the writings, and of the charge for the same, as due to himself, and then *an entry that they were paid*, were admitted in evidence and afterwards agreed by the court to be so. (*Warren* d. *Webb* v. *Greenville*, 2 *Str.* 1129).

So, to prove the real time of executing a lease to have been different from its actual date, an attorney's entry of charges by himself for making the lease, and of payment of those charges, was admitted as good evidence; (*Doe* d. *Reece* v. *Robson*, 15 *East*, 33); and see the case of the surgeon, *ante*, 375).

This proceeds upon the ground that there was a total absence of interest in the persons making the entry to pervert the fact, and at the same time a competency in them to know it. And *Bayley*, J., said, it had long been an established principle of evidence, that if a party, who has a knowledge of the fact, make an entry of it, whereby he charges himself, or discharges another upon whom he would otherwise have a claim, such entry is admissible evidence of the fact, because it is against his own interest. (*Doe Lessee of Reece* v. *Robson*, 15 *East*, 35).

A party cannot make evidence for himself.

"The general rule," said Lord *Hardwicke*, (in the case of *Glynn* v. *The Bank of England*, 2 *Ves.* 43), "is, that a man cannot make evidence for himself. What he writes or says for himself cannot be evidence of his right, and consequently cannot be for his representative claiming in his right and place. I will not say" (added Lord *Hardwicke*) "how length of time may vary it; but otherwise it cannot be any more than for himself." (1 *Phill. Ev.* 241, 242; *R.* v. *Debenham*, 2 *B. & Al.* 185).

A man's book of accounts is no evidence for the owner of the book, though it is for the adverse party; for his book cannot be of better credit than his oath, which would not serve in his own case. (*Tr. per Pais*, 348). As to shop books in action for goods sold, &c., *see* 7 *Jac. I. c.* 12; *B. N. P.* 282.

Hearsay, when part of the transaction.

When Hearsay part of the Transaction itself.]—When hearsay is introduced, not as a medium of proof, in order to establish a distinct fact, but as being in itself a *part of the transaction* in question, it is then admissible; for, to exclude it, might be to exclude the only evidence of which the nature of the case is capable. (*Rosc.* 17; *B. N. P.* 40; 2 *Hawk.* c. 46, s. 46). As the declarations of a party of the extent of the hurt received by him from an assault made immediately on his receiving it, or in answer to the inquiries of a medical man. (*See Thompson* v. *Trevanion*, *Skin.* 402; *Aveson* v. *Lord Kinnaird*, 6 *East*, 193; *Hoare* v. *Allen*, 3 *Esp.* 276; *Rex* v. *Foster*, 6 *C. & P.* 325). In *Lord Gordon's* case, the declarations of the mob were held admissible in evidence. (21 *How. St. Tr.* 542).

Titles of office.

Official Situations, &c.]—If, upon collateral issue, it is to be proved that such an one was justice of the peace, baronet, or the like, common reputation is sufficient proof, without showing the commission or letters patent of the creation. (*Tr. per Pais*, 347).

And in the case of justices of the peace, peace officers, constables, &c., it is sufficient to prove that they acted in those characters, without producing their appointments. (*So determined by all the Judges in the case of the Gordons, tried for murder in* 1789, 1 *Leach*, 581; *R.* v. *Shelley*, 1 *Leach*, 381, n.; *Berryman* v. *Wise*, 4 *T. R.* 366). And this, although they acted under a special authority, derived from a local act or otherwise. (*Butler* v. *Ford*, 1 *C. & M.* 662).

And in an indictment for disobeying a justice's order for diverting a road, it was held unnecessary to produce the commission of the peace

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to prove the persons to be magistrates who signed the order. (*Per Hotham*, B., *R.* v. ——, *Kingston Lent Ass.* 1801, 1 *Nol. R. L.* 598). And where an affidavit was sworn before a person who acted as a commissioner for taking affidavits, it was held sufficient. (*R.* v. *Howard*, 1 *M. & Rob.* 187).

So at the trial of an officer on an information for defrauding government by false returns of musters, it was held sufficient to prove that he acted in the character mentioned in the information, without proving the commission from the king. (*R.* v. *Gardiner*, 2 *Camp* 513). And where a person who acted as a letter-carrier was indicted for embezzlement, under 2 Will. IV. c. 4, the production of his appointment was held to be unnecessary. (*R.* v. *Barrett*, 6 *C. & P.* 124).

And in general, where a party assumes a particular character, proof of that fact will suffice, as against that party. (*See Bevan* v. *Williams*, 3 *T. R.* 635, n.)

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5. Dying Declarations.

(5) Dying declarations.

The *Dying Declarations* of a person who expects to die, respecting the circumstances under which he received a mortal injury, are constantly admitted in criminal prosecutions, where *the death* is the subject of *criminal inquiry*, though the accused was not present when they were made, and had no opportunity for cross-examination. (*See* 1 *Phill. Ev.* 223; 1 *Stark. Ev.* 101). And this either against or *in favour* of the party charged with the death. (*Rex* v. *Scaife*, 1 *M. & Rob.* 551). For it is considered, that when an individual is in constant expectation of immediate death, all temptations to falsehood, either of interest, hope, or fear will be removed, and the awful nature of his situation may be presumed to impress him as strongly with the necessity of a strict adherence to truth as the most solemn obligation of an oath administered in a court of justice. (1 *Leach*, 502; 1 *Gilb. Evid.* 280; 1 *Chit. C. L.* 568, 9). To enable these testimonies to be given in evidence, they must be made when the party is not only in actual danger of death, but when he is aware of the circumstances in which he is placed, and impressed with a sense of speedy dissolution. (1 *Leach*, 503; 1 *East*, *P. C.* 353). But it is not necessary to prove expressions implying apprehensions of immediate danger, if it be clear the party does not expect to survive the injury. (*R.* v. *Bonner*, 6 *C. & P.* 386). And this may be collected from the general circumstances of his condition. (*Id.*) As where the party was a member of the Romish church, and had confessed, been absolved, and received extreme unction before making the declaration. (*R.* v. *Minton*, 1 *M'Nally*, 386).

A boy between ten and eleven years of age was mortally wounded, and died the next day. On the evening of the day on which he was wounded, he was told by a surgeon that he could not recover. The boy made no reply, but appeared dejected. It appeared, from his answers to questions put to him, that he was aware that he would be punished hereafter if he said what was not true; a declaration made by him at this time was therefore held receivable in evidence on the trial of a person for killing him, as being a declaration *in articulo mortis*. (*Reg.* v. *Perkins*, 9 *Car. & P.* 395).

But in a case of murder, it appeared that, two days before the death of the deceased, the surgeon told her that she was in a very precarious state; and that, on the day before her death, when she had become much worse, she said to the surgeon that she found herself growing worse, and that she had been in hopes she would have got better, but as she was getting worse she thought it her duty to mention what had taken place. Immediately after this she made a statement, which was considered not receivable in evidence as a declaration in *articulo mortis*, as it did not sufficiently appear that, at the making of it, the

deceased was without hope of recovery. (*Reg.* v. *Megson*, 9 *Car. & P.* 418).

(5). *Dying Declarations.*

In *R.* v. *Mosley* (*Ry. & M. C. C. R.* 97), it was held, that the declarations of the deceased, made on the day he was wounded, and *when he believed he should not recover*, were evidence, although he did not die till eleven days after, and although the surgeon did not think his case hopeless, and continued to tell him so till the day of his death. In one case, where the party, being confined to his bed, said to his surgeon, "I am afraid, doctor, I shall never recover;" and in another, where the surgeon having said, "You are in great danger;" the party replied, "I fear I am;" declarations subsequently made were admitted. (*R.* v. *Craven, Lewin, C. C.* 77; *R.* v. *Simpson, Lewin, C. C.* 78). In *R.* v. *Christie* (*Car. C. L.* 232, *O. B.* 1821), the deceased asked his surgeon if the wound was *necessarily mortal;* and on being told that recovery was *just possible*, and that there had been an instance where a person had recovered after such a wound, he said, "I am satisfied;" and after this he made a statement. This statement was held by *Abbott*, C. J., and *Park*, J., to be inadmissible as a declaration *in articulo mortis*, as it did not appear that the deceased *thought himself* at the point of death; for being told that the wound was not necessarily mortal, he might still have had a hope of recovery. And where the only evidence of the dying man being aware of his situation consisted in his saying "he should never recover," it was held insufficient. (*R.* v. *Van Butchell*, 3 *C. & P.* 631).

The declarations are only admissible where *the death* is the subject of the charge, and the circumstances of the death are the subject of the declaration. Thus in a case, where the prisoner was indicted for administering savin to a woman pregnant, but not quick with child, with intent to procure abortion; the woman was dead, and, for the prosecution, evidence of her dying declaration upon the subject was tendered. The learned judge rejected the evidence, observing, that although the declaration might relate to the cause of the death, still such declarations were admissible in those cases alone where the death of the party was the subject of inquiry. (*R.* v. *Hutchinson*, 2 *B. & C.* 608). So in *R.* v. *Mead* (2 *B. & C.* 605; 4 *D. & R.* 120, S. C.), defendant having been convicted of perjury, a rule *nisi* for a new trial was obtained; whilst that was pending, the defendant *Mead* shot the prosecutor *Law;* and on shewing cause against the rule, an affidavit was tendered of the dying declaration of the latter, as to the transaction out of which the prosecution for perjury arose. The Court held, that it could not be read; for dying declarations are admissible only where the death is the subject of the charge, and the circumstances of the death are the subject of the declaration. So in trials for robbery, the dying declarations of the party robbed are rejected. (*Per Bayley and Best*, JJ. 1822, 1 *Phill. Ev.* 225; *R.* v. *Lloyd*, 4 *C. & P.* 233).

In *Wright* v. *Littler*, (3 *Burr*, 1244), however, the declarations of subscribing witnesses, confessing the forgery of a deed, were admitted; and *see Aveson* v. *Lord Kinnaird*, (6 *East*, 195); but in *Doe* d. *Sutton* v. *Ridgway*, 4 *B. & Al.* 54, *Abbott*, C. J., says, that the cases cited (viz. those of the deceased persons, in cases of murder or manslaughter, or subscribing witnesses to deeds, confessing the deeds to be forged) are the only exceptions to the general rule of not receiving evidence unless upon oath, and with the opportunity of a cross-examination; and *Bayley*, J., observes, that the declarations admitted in the case of *Aveson* v. *Kinnaird*, (6 *East*, 188), were a part of the *res gestæ*.

The dying party must, at the time of making the declarations, to render them admissible, have an idea of a future state; therefore the declarations of a dying child, only of four years of age, have been held inadmissible. (*R.* v. *Pike*, 3 *C. & P. C. N. P.* 598).

Nothing can be evidence in a declaration in *articulo mortis* that would not be so if the party were sworn. Therefore, any thing the murdered person, in *articulo mortis*, says as to *facts*, is receivable, but not what

(8). *Character, Evidence of.*

he says as matter of *opinion*. (*R.* v. *Sellers*, *O. B.* 1796, *Car. C. L.* 233).

If the declaration of the deceased, at the time of his making it, be reduced into writing, the written document must be given in evidence, and no parol testimony respecting its contents can be admitted. (*Vin. Ab. Evid.* 38, A. b.) And if a declaration in *articulo mortis* be taken down in writing, and signed by the party making it, the judge will neither receive a copy of the paper in evidence, nor will he receive parol evidence of the declaration. (*R.* v. *Gay*, 7 *C. & P.* 230). But where the dying person repeated his declaration three several times in the course of the same day, the fact of its having been committed to writing in the presence of a magistrate, on the second occasion, will not, it seems, exclude parol evidence of the others, where it is not in the power of the prosecutor at the trial to give that which has been committed to writing in evidence. (*R.* v. *Reason*, 1 *Str.* 500; 16 *How. St. Tr.* S. C.) And on one occasion in Ireland, in a case where the depositions of the individual were made at a time when he thought himself dying, taken down by a magistrate, and not in the presence of the prisoner, it being objected at the trial that these depositions were not pursuant to the stat. 10 Car. c. 1, (Irish), the magistrate was sworn and gave parol evidence of the declarations of the deceased. (*R.* v. *Callaghan*, 1 *M'Nally*, 385).

The dying declaration of a criminal at the scaffold will not be thus admissible; because his oath could no longer have been received in a court of justice after his blood is corrupted. (1 *Leach*, 337; 2 *Hawk.* c. 46, s. 51).

The court are to decide as to the admissibility of the declaration. (1 *Leach*, 504; *R.* v. *Hucks*, 1 *Stark. C. N. P.* 532; *R.* v. *Van Butchell*, 3 *C. & P. C. N. P.* 629).

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6. Confessions.

(6). Confessions.

We have already seen how far the confessions of the party himself are evidence against him. (Tit. "*Confession*," *Vol. I.*)

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7. Opinions of Witnesses.

(7). Opinions.

Opinions.]—Upon questions of skill and judgment, the opinions of competent judges are admissible in evidence; but in general mere matter of opinion is not so. Thus, on a trial where the defence is insanity, a witness of medical skill may be asked, whether such and such appearances, proved by other witnesses, are, in his judgment, symptoms of insanity, (*R.* v. *Wright*, *R. & R. C.* 456); but it is questionable if he can be asked, whether, from other testimony given, the act with which the prisoner is charged is, in his opinion, an act of insanity, for this is the very point to be decided by the jury. (*Id.*) A physician, who has not seen the particular patient, may, after hearing the evidence of others, be called to prove, on oath, the general effects of the disease described by them, and its probable consequences in the particular case. (*Peake's Evid.* 208; *and see Roscoe*, 77).

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8. Evidence of Character.

(8) Evidence of character.

In trials for felony and high treason, and in trials also for misdemeanors (where the direct object of the prosecution is to punish the offence), the prisoner is always permitted to call witnesses to his general character; and in every case of doubt proof of good character will be entitled to great weight. The inquiry as to the prisoner's general character ought manifestly to bear some analogy and reference to the nature of the charge against him. On a charge of stealing, it would be irrelevant and absurd to inquire into the prisoner's loyalty or humanity; on a charge of high treason, it would be equally absurd to inquire into

his honesty and punctuality in private dealings. Such evidence relates to principles of moral conduct, which, however they might operate on other occasions, would not be likely to operate on that which alone is the subject of inquiry; it would not afford the least presumption, that the prisoner might not have been tempted to commit the crime for which he is tried, and is therefore totally inapplicable to the point in question. The inquiry must also be as to the general character; for it is *general character* alone which can afford any test of general conduct, or raise a presumption that the person who had maintained a fair reputation down to a certain period would not then begin to act a dishonest, unworthy part. Proof of *particular* transactions in which the defendant may have been concerned is not admissible as evidence of his general good character. The best medium of proof of general character is, by showing how the person stands in general estimation; proof that he is reputed to be honest is evidence of his character for honesty, and the species of evidence most correctly resorted to in such inquiries. (1 *Phill. Evid.* 7 ed. 177).

(1). *Public Documents.*

This evidence is only admitted in prosecutions which subject a man to corporal punishment, and not in actions or informations for penalties, though founded on the fraudulent conduct of the defendant. (*Peake's Evid.* 7).

"The true line of distinction," *Eyre*, C. B., said, "is this: in a direct prosecution for a crime, such evidence is admissible; but where the prosecution is not directly for the crime, but for the penalty, as in this information, it is not." (*Attorney-General* v. *Bowman*, cited 2 *Bos. & Pull.* 532).

On the trial of an indictment for a rape, evidence is admissible on the part of the prisoner, that the woman bore a notoriously bad character for want of chastity and common decency, or that she had previously been criminally connected with the prisoner; but it cannot be shewn that she had a criminal connexion with other persons. (*R.* v. *Hodgson, R. & R. C. C.* 211; 1 *Phill. Evid.* 176, 7 ed.) And, on an indictment for an assault with intent to commit a rape, general evidence of the woman's bad character, previous to the supposed offence, is clearly admissible; but evidence of particular facts, to impeach her chastity, cannot be received in this case more than in the last, not even for the purpose of contradicting her answers in cross-examination. (*R.* v. *Clarke*, 2 *Stark. N. P.* 243). Her answers to questions respecting particular facts, not involved in the issue, are conclusive. And if, on cross-examination, she admit her own misconduct in some earlier transactions, it would be proper, on re-examination, to inquire into her conduct subsequent to such transactions, for the purpose of restoring her credit. Other witnesses may also be called to shew that she has since retrieved her character. (*Id.* 1 *Phill. Evid.* 176, 7 ed.) And see further, *post*, "*Rape*," *Vol. V.*

III. Modes of Proof by Written Evidence.

The Modes of proving Facts are by, 1st, Written Evidence; and 2nd, Verbal Evidence by Witnesses. Modes of Proof.

Written Evidence may consist of public documents,—of records and proceedings in courts,—or of private documents. (1). Writte evidence.

(1). Public Documents.

Acts of Parliament.]—Acts of parliament relate either to the kingdom at large, when they are called *general* acts; or only to particular classes of men, or to certain individuals, in which case they are called *private* acts. (*Bull. N. P.* 222). Acts of Parliament.

Public acts are not the subject of proof in any court of justice; for Public acts.

(1). *Public Documents.*

being the law of the land, they are supposed to be known to every man. The printed statute-book is on all occasions referred to, not as an authentic copy of the statute itself (which is a record), but as hints of that which is supposed to be lodged in every man's mind already. (*Gilb.* 10).

Preamble of acts.

The preamble of a public act of Parliament, reciting that certain outrages had been committed in particular parts of the kingdom, is admissible in evidence, for the purpose of proving an introductory averment in an information for a libel, that outrages of that description had existed, because in judgment of law every subject is privy to the making of the statute. (*R.* v. *Sutton*, 4 *M. & Sel.* 532).

Private acts of Parliament, not concerning the public, are not considered as *laws*, but *facts*, and therefore must be proved like other records which concern private rights, by copies examined with the Parliament rolls; for the printed statutes are, in this respect, only private copies, and, consequently, no evidence of the fact. (*Bull. N. P.* 225). In most private acts a clause is inserted directing that the act shall be deemed and taken to be as a public act, or that a copy printed by the king's printer shall be admitted in evidence, which supersedes the necessity of evidence to prove, or special pleading to introduce them to the notice of a court of justice. (*Beaumont* v. *Mountain*, 10 *Ring.* 404; 4 *M. & Sel.* 117, S. C.; *and see Woodward* v. *Cotton*, 1 *C. M. & R.* 44). But the insertion of such a clause does not, it seems, put a private act on the same footing with a public general act, with regard to recitals contained in it. (*Brett* v. *Beales*, *M. & M.* 441).

Irish acts. 41 Geo. 3, c. 90.

By stat. 41 Geo. III. U. K. c. 90, s. 9, the statutes of *England* and of *Great Britain*, printed and published by the king's printer, shall be received as conclusive evidence of the several statutes in the courts of either kingdom. (See further, *post*, "*Statutes*," *Vol. V.*)

Journals of Parliament.

Journals of Parliament.]—The journals of the houses of Parliament may be proved by examined copies; but the printed journals are not evidence. (*Lord Melville's case*, 24 *How. St. Tr.* 603). In *Jones* v. *Randall* (*Cowp.* 17), it was held an unstamped copy of the minutes of the reversal of a judgment in the House of Lords, without more of the proceeding, was evidence of such reversal.

The journals are in general evidence of the facts therein stated. (*Rex* v. *Franklin*, 17 *How. St. Tr.* 617). But the resolutions of the house are not so. (*Oates's case*, 10 *id.* 1165—7).

Proclamations, &c.

Proclamations, Addresses, and Articles of War.]—These, as printed by the king's printer, are considered as sufficiently proving themselves by the mere production of a witness, who purchased them of such printer. (*See Rex* v. *Withers*, 5 *T. R.* 446; *Bradley* v. *Arthur*, 4 *B. & Cres.* 304; *Attorney-General* v. *Theakstone*, 8 *Price*, 89). A paper from the Secretary of State's office, transmitted by the British ambassador at a foreign court, and purporting to be a declaration of war by the government of that country against another foreign state, is admissible for the purpose of shewing the precise period of the commencement of the war. (*Theluson* v. *Cosling*, 4 *Esp.* 266). The recitals in a proclamation are evidence of the facts recited. (*Rex* v. *Sutton*, 4 *M. & Sel.* 532).

Gazette.

Gazette.]—The gazette printed and published by the king's printer, or by the authority of government, is evidence of all acts of state, and is sufficiently proved by the production by a witness who purchased it of such printer. (*Rex* v. *Holt*, 5 *T. R.* 436). But according to *Rex* v. *Forsyth*, (*R. & R. C. C.* 277), it seems not to be necessary to prove it was bought of the gazette printer, or where it came from.

It is evidence of all acts of state therein recited (*id.*), but not of any *private* matters respecting individuals (*Rex* v. *Holt*, 5 *T. R.* 436), as the appointment of an officer to a commission in the army (*Kirwan* v. *Cock-*

burn, 5 *Esp.* 233; *Rex* v. *Gardner*, 2 *Camp.* 513), or a grant of land, &c., (*Rex* v. *Holt*, 5 *T. R.* 443), or of a division of a parish into distinct parishes by an order in council. (*Greenwood* v. *Wookam*, 2 *M. & Rob.* 363).

1. *Public documents, &c.*

The Gazette is no evidence of a party having had notice of a private matter contained therein, unless it be proved that such party was in the habit of reading, or had actually read, the Gazette itself, or the like. (See *Peake*, 154, 155; *Leeson* v. *Holt*, 1 *Stark.* 186; *Munn* v. *Baker*, 2 *Stark.* 255; *M. & M.* 153: *Rowley* v. *Horne*, 3 *Bing.* 2; *Harratt* v. *Wise*, 9 *B. & Cres.* 712).

Almanacks.

Almanacks.]—The examination of an almanack, that such a day of the month was *Sunday*, was ruled to be sufficient; and that a trial of this by a jury is not necessary, although it is a matter of fact. (*Page* v. *Fawcett*, *Cro. Eliz.* 227). But the almanack should be annexed to the common prayer-book. (*Brough* v. *Perkins*, 6 *Mod.* 81; see tit. "*Almanack*," *Vol. I.*)

Parish register.

Parish, Non-parochial, and other Registers.]—The entry of the names and titles of persons in a *church book*, either for marriages or births, is evidence; but not conclusive of the marriage or birth of any persons, unless the identity of the person (by such entries intended) is fully proved, and also strengthened with circumstances, as cohabitation, the allowance of the parties themselves, and the like. (11 *Vin. Abr.* 89; *Rex* v. *North Petherton*, 5 *B. & Cres.* 508; 4 *D. & R., M. C.* 79, S. C.)

But a day-book from whence the register is made up was not allowed as evidence to contradict the latter in a question of legitimacy; for though it was insisted that one was the original entry, the other was the only register, and there cannot be two registers in one parish. (*May* v. *May*, 2 *Str.* 1073; *Bull. N. P.* 247). And in *Doe* v. *Bray*, (8 *B. & Cres.* 813), it was held, that an entry in the register-book, by the minister of the parish, of the baptism of a child which had taken place before he became minister, or had any connexion with the parish, and of which he received information from the parish clerk, was not admissible in evidence, nor was the private memorandum of the fact made by the clerk, who was present at the baptism.

A parish register, containing an entry of baptism as to the time of a child's birth, is not evidence of the age. (*Wihen* v. *Law*, 3 *Stark.* 63). Nor is the register of the christening of a child in a particular parish evidence, when not accompanied by other circumstances, that the child was born in the parish. (*Rex* v. *North Petherton*, 5 *B. & C.* 508; 8 *D. & R.* 325; 4 *D. & R., M. C.* 79, S. C.; 12 *Vin. Abr.* 89, *supra*). If a marriage be proved by a person who was present, it is not necessary to prove the registration, or license, or banns. (*Allison's case*, *R. & R.* 109).

The entry may be proved by an examined copy from the entry in the register, or by production of the register itself. (*B. N. P.* 247). The attesting witness to the register need not be subpœnaed. (*Dougl.* 182).

We have just seen, that some evidence of identity of the parties, concerning whom the entry is made, must be given. This may be effected by calling the minister, clerk, or attesting witness, or any other person present on or immediately before or after the occasion, or by proving the handwriting of the party to the entry, if he signed it. (*Dougl.* 162).

By stat. 52 Geo. III. c. 146, s. 7, it is enacted, that copies of the register-books, verified by the officiating minister of the parish, shall be transmitted annually by the churchwardens, after they or one of them shall have signed the same, to the registrars of the diocese within which the church is situated. But quære, whether the bishop's transcipts, made before that act, can be used except as secondary evidence? (*Walker* v. *Beauchamp*, 6 *C. & P.* 552).

Non-parochial registers.

The proofs of births, deaths, and marriages, are now regulated by the 6 & 7 Will. IV. c. 86, s. 38, which enacts, that certified copies of entries, purporting to be sealed with the seal of the registrar-general's office, shall be evidence of the birth, death, or marriage to which they relate, without other proof of such entry. The entries of other registrars, be-

1. *Public documents, &c.*

sides the registrar-general, may be evidence under limitations, (ss. 22, 23, 28), and they and all rectors, &c. are bound to give certified copies, (s. 35), but it is not provided that such certificate shall be evidence without verification. The act 6 & 7 Will. IV. c. 85, provides for the registration of marriages solemnized under that act, and is also incorporated with c. 86; and it enacts, that the provisions of the act c. 86 relating to the register of marriages, or certified copies thereof, shall extend to marriages under the act c. 85.

By the 3 & 4 Vict. c. 92, certain non-parochial registers of births, marriages, and deaths, transferred to the registrar-general, are made admissible in evidence, either by producing them, or certified extracts from them, after previous notice to the opposite party. (See tit. "*Register*," *Vol. V.*)

Dissenters', &c. registers

The copy of a register of a dissenting chapel is not evidence to prove a marriage, birth, or death, as it is not a public document. (*Newnham* v. *Raithby*, 1 *Phill.* 315; *Whittuck* v. *Waters*, 4 *C. & P.* 375).

Foreign registers.

The copy of a register of a foreign chapel is not admissible to prove a marriage abroad. (*Leader* v. *Barry*, 1 *Esp.* 353). Neither is the copy of a register of baptism kept in the island of Guernsey. (*Huet* v. *Le Mesurier*, 1 *Cox's Ca.* 275; see *Brown* v. *Thornton*, 1 *Nev. & Per.* 339; 6 *Ad. & E.* 185, S. C.)

Other public books, &c.

Other Public Books, Entries, &c.]—Entries in public books are frequently evidence, and they are proveable either by production of the books themselves, or by examined copies of the entries. Thus entries

Navy-office.

in books of the Navy-office are sufficient evidence that a person of a particular name is dead, proving also the usage to return such persons dead, and the identity of the party. (*Bull. N. P.* 249; *Wallace* v. *Cook*, 5 *Esp.* 117; *Rhode's case*, 1 *Leach*, 24).

Excise.

Excise books, transcribed from the master's specimen papers, are evidence against him, without calling the officers who have transcribed them, as it is said, *ex necessitate rei.*

Customs, land tax, Bank, East India Company, &c.

(*R.* v. *Grimwood*, 1 *Price*, 369). So entries in the books of the custom-house, land-tax commissioners, Bank, East India Company, or South Sea Company, or the like, are evidence. (See *Geery* v. *Hopkins*, 2 *Ld. Raym.* 851, 7 *Mod.* 129, S. C.; *R.* v. *King*, 2 *T. R.* 234; *Breton* v. *Cope*, *Peake*, 30; *Warriner* v. *Giles*, 2 *Stra.* 954; *Crew* v. *Saunders*, *Id.* 1005; *Edwards* v. *Vesey*, *Hardw.* 128). But land-tax assessments are not evidence of seisin where it is shewn to be usual to retain the name of the deceased proprietors on the books till the estate is sold to a different family. (*Doe* v. *Arkwright*, 1 *Nev. & Man.* 731).

Lloyd's list.

So an entry in the book at Lloyd's has been admitted as evidence. (3 *Esp.* 242; *Bain* v. *Case*, 3 *C. & P.* 496. But see *Freeman* v. *Baker*, 5 *C. & P.* 475).

Poll-books.

So an entry in the poll-books at an election is evidence. (*Mead* v. *Robinson*, *Willes*, 424; *Brocas* v. *Mayor and Aldermen of London*, 1 *Stra.* 307).

Post-office marks.

Post-office marks in town or country, proved to be such, are evidence that the letters on which they are impressed were in the office to which those marks belong at the dates those marks specify. (*R.* v. *Plumer*, *R. & R. C. C.* 264; *Fletcher* v. *Braddyll*, 3 *Stark.* 64. See *Warren* v. *Warren*, 1 *C., M. & R.* 250). The mark of the double postage having been paid does not of itself prove the letter contained an inclosure. (*R.* v. *Plumer*, *R. & R.* 264). The post-mark may be contradicted by parol evidence of the real date of posting. (*Stocken* v. *Collen*, 7 *M. & W.* 515).

Heralds' Office.

Rolls or ancient books in the *Heralds' Office* are evidence to prove a pedigree; but an extract of a pedigree, proved to be taken out of records, shall not; because such extract is not the best evidence in the nature of the thing, as a copy of such records might be had. (*Bull. N. P.* 248; 3 *Blac. Com.* 105). The heralds' visitation books of counties are evidence on a question of pedigree. (*Pitton* v. *Walker*, 1 *Stra.* 162).

Duchy of Cornwall.

Documents affecting the possession or revenues of the duchy of Cornwall are public acts, and evidence of the rights of the Crown. (*Rowe* v. *Brenton*, 8 *B. & Cres.* 743).

1. *Public entries, &c.*

Ship's papers.

The copy of an official paper, containing an entry of the number of passengers on board a vessel, made in pursuance of an act of parliament by the captain, and deposited at the East India House, is admissible to prove the number and description of the persons on board the vessels. (*Richardson* v. *Mellish*, *R. & M. C. N. P.* 66; 2 *Bing.* 229, S. C.). So the log-book of a man-of-war is evidence to shew when a certain ship came under her convoy. (*D'Israeli* v. *Jowett*, 1 *Esp. R.* 427).

Clerk of peace books.

Entries in the books of the clerk of the peace of deputations (many years since granted to gamekeepers by the owner of a manor) are evidence to shew that the party there mentioned exercised the right of appointing gamekeepers, by applying to the clerk of the peace to get certificates, without production of the deputations themselves. (*Hunt* v. *Andrews*, 3 *B. & Al.* 341; *Rushworth* v. *Craven*, 1 *M'C. & Y.* 417).

Magistrate's clerk.

A minute-book, kept by the magistrate's clerk, is not evidence to shew who were appointed by the magistrates to be surveyors of the highways for the year 1812, without proof of search for the original appointment, under the hands and seals of the magistrates. (1 *Car. & M.* 157).

Master's office, Queen's Bench.

The book from the Master's office in the Queen's Bench is admissible to prove a person an attorney of that Court without production of the roll. (*R.* v. *Crossley*, 2 *Esp.* 524). So the books of the King's Bench and Fleet prisons are admissible to prove the dates of the commitment and discharge of prisoners; (*R.* v. *Aickles*, *Leach*, *C. L.* 436); but not the *cause* of the commitment, of which the commitment itself is the best evidence. (*Salte* v. *Thomas*, 3 *B. & P.* 188).

Fleet prison.

The books of the Fleet prison are not, as it seems, evidence to prove a marriage, for they are not made by public authority. (*Reed* v. *Passer*, *Peake*, 231; 1 *Esp.* 213, S. C.; *Reed* v. *Passer*, *Peake*, 233, n.; *Roscoe*, 93; *sed vide Reed* v. *Passer*, *Peake*, 231; 1 *Esp.* 197; 16 *Ves.* 49; *Doe* d. *Davies* v. *Gatacre*, 8 *Car. & P.* 578).

Corporation books.

Corporation books, so far as they concern the public government of a town, when publicly kept, and the entries made by a proper officer, are admissible as evidence of the facts contained therein. (*Peake*, 97; *Marriage* v. *Lawrence*, 3 *B. & Al.* 142; *R.* v. *Mothersell*, 1 *Stra.* 93; *Brett* v. *Beales*, 1 *M. & M.* 29). And corporation books are, it seems, in all cases, as between *members* of the corporation, admissible in evidence. (*Mayor of London* v. *Mayor of Lynn*, 1 *Hen. Bla.* 214, n.); though this seems contradicted by the recent case of *Hill* v. *Manchester Water Works*, (5 *B. & Adol.* 866). In a case of pedigree, an entry in the books of the Merchant Tailors' Company, that T. C. was admitted a freeman of that Company by the description of T. C., of S. street, son of J. C., deceased, is receivable in evidence, not only to prove the fact that T. C. was admitted a freeman, but that the Company received him by that description, and entries of admission to the freedom of the City of London are also evidence in like manner. (*Collins* v. *Maule*, 8 *Car. & P.* 502). If the books are ancient, it must be shewn that they came from the proper custody, as from a chest which has been always in the custody of the clerk of the corporation. (*Mercers of Shrewsbury* v. *Hart*, 1 *C. & P.* 114). It is not sufficient if they were brought from a chest found in the house of a former clerk after his death. (*Id.*) The entries may be proved by examined copies. (*Brocas* v. *Mayor & Aldermen of London*, 1 *Stra.* 308), or by the books themselves. If the entries do not relate to corporate acts, the contents must be proved by other means. (*R.* v. *Gwyn*, 1 *Stra.* 401).

When an instrument being a corporate act, and intended to be proved as such, is adduced in evidence, the seal of the corporation must be proved to be genuine by a witness acquainted with it; *Moises* v. *Thornton*, 8 *T. R.* 307); but it is not necessary to call a witness who saw the seal fixed. (*Id.*) The seal of the corporation of London proves itself. (*Doe* d. *Woodmass* v. *Mason*, 1 *Esp.* 53).

1. *Public entries, &c.*

Public Documents.]—The voting papers given in at the election of councillors, under the 5 & 6 Will. 4, c. 76, which, by section 35, the mayor is to cause to be kept in the town-clerk's office for six months after the election, are not such public documents as to prove themselves on production from the proper custody. Where, therefore, such papers, having been handed over by the mayor to the town-clerk, were by his clerk delivered over to the clerk of the succeeding town-clerk who produced them at the trial; it was held that the former town-clerk, also, should have been called to prove that the papers transmitted by him were the same which he had received from the mayor. (*Reg.* v. *Ledgard*, 3 *Nev. & Per.* 513; 8 *Ad. & E.* 535, S. C.).

Parish books.

Entries in parish books are sometimes evidence, as an entry in the parish register; as to which see *ante*, 385. On the trial of an indictment for the non-repair of highways, entries in an ancient parish book, produced by the churchwarden from the parish chest, were admitted as evidence, to shew who were surveyors of the highways in 1707. (*Rex* v. *Inhabitants of Pembroke*, 1 *Car. & M.* 157).

But on an issue raised upon an alleged immemorial custom for the parishioners of a parish to go through a particular house upon their perambulations of the parish boundaries, entries in the parish books, recording the fact, that the perambulations had taken a particular line, were not received evidence on such an issue. (*Taylor* v. *Devey*, 7 *Ad. & E.* 45).

Entries made by a medical officer in a book, which he is directed to keep by a rule under the hand and seal of the Poor Law Commissioners, of his visits to sick paupers, are not admissible in evidence for him as a public writing to prove that he paid such visits. *Merrick* v. *Wakley*, 3 *Nev. & Per.* 284; 8 *Ad. & E.* 170).

Apprentices.

By the 42 Geo. III. c. 46, (*ante*, "*Apprentice*," *Vol. I.*), the particulars of parish indentures are directed to be entered in a book; which book shall be deemed sufficient evidence in courts of law, of the existence and particulars of such indentures, in case it shall be proved the originals are lost or destroyed.

Poor rates.

By 17 Geo. II. c. 38, s. 14, true copies of all rates and assessments, made for the relief of the poor, are to be entered in a book provided for that purpose by the churchwardens of every parish. (*Post*, "*Poor*," *Vol. IV.*)

Vestry books.

Entries in vestry books are sometimes evidence: thus an entry in a vestry book, stating that A. was duly elected treasurer of the parish at a vestry duly held in pursuance of notice, is evidence of such election. (*R.* v. *Martin*, 2 *Camp.* 100; *and see Price* v. *Littlewood*, 2 *Camp.* 288, *ante*, 385).

Inspection.

Though inspection of public books and writings is in general granted in civil cases, it is not so in criminal cases; where it would have the effect of making a defendant furnish evidence to criminate himself. *R.* v. *Heyden*, 1 *W. Bla.* 351; *R.* v. *Dr. Purnell*, *id.* 37; 1 *Wils.* 239, S. C.; *R.* v. *Worsenham*, 1 *Lord Raym.* 705; *Reg.* v. *Mead*, 2 *Id.* 927; *R.* v. *Cornelius*, 2 *Stra.* 1210. (See as to Inspection, *post*, "*Inspection*," *Vol. III.*)

Inscriptions.

Inscriptions on Tombs.]—Inscriptions on monuments and gravestones are frequently evidence of the truth of the facts stated in such inscriptions on questions of pedigree, subject to the common rules respecting proof of identity. (3 *Bla. Com.* 105. *See Goodright* v. *Moss*, *Cowp.* 594; *Berkeley Peerage Case*, 4 *Camp.* 404; *Herbert* v. *Tuckal*, *T. Raym.* 84). But a *pedigree*, which purported to have been compiled from monumental inscriptions, family records, and history, was held not admissible in evidence, on the trial of a writ of right. (*Davies* v. *Lowndes*, 5 *Bing. N. C.* 161; 7 *Scott*, 22). It seems a copy of an inscription on a tomb-

stone in the burial-ground of a Wesleyan chapel is not evidence of the death of a party, in a question not of pedigree. (*Whittuck* v. *Waters*, 4 *P. & P.* 375.)

1. *Public entries, &c.*

Public Surveys.—Surveys, taken on public occasions, are also evidence to ascertain the rights of individuals not named in them. Thus Doomsday book, which was a survey of the king's lands made in the time of William the Conqueror, is the only evidence to prove whether a manor is held in ancient demesne; that is, whether it was part of the socage tenure, in the hands of Edward the Confessor, or not; and so high is the credit of this book, that the inspection is made by the court. So if a question arise as to the extent of the ports, there lies in the Exchequer a particular survey which ascertains it: and in many instances, where a commission has been confined to a particular place, it has been received as admissible evidence; and even when the commission has been lost, the survey taken under it has been allowed as evidence. (*Anon., Hob.* 188; *Gilb. Ev.* 78; 1 *Phill. Ev.* 403, 7th ed).

Public surveys. Doomsday book.

But, to prove the extent and rights of a manor which had formerly been parcel of the duchy of Lancaster, a document produced from the duchy-office was tendered in evidence, purporting to be a survey of the manor made in 33 Eliz. while the manor belonged to the duchy, by the deputy-surveyor of the duchy, founded on the presentment of the tenants of the manor, at a court of survey, of which it appeared that Queen Elizabeth had paid the expenses, was held to be inadmissible, either as a document made under public authority, or as evidence of reputation. (*Evans* v. *Taylor*, 3 *Nev. & Per.* 174; 7 *Ad. & E.* 617).

Histories.]—Books and chronicles of public history are not admissible in order to prove particular facts or customs. But they are evidence to prove a matter relating to the kingdom at large, as being the best evidence of which the matter is capable. (*B. N. P.* 249; 1 *Stark. Evid., Part II. p.* 180). Camden's Britannia was rejected on the question, whether, by the custom of Droitwich, salt-pits could be sunk in any part of the town, or only in a certain place. (*Stainer* v. *The Burgesses of Droitwitch*, 1 *Salk.* 281; *Skin.* 623). So on a question, whether the Abbey de Sentibus was an inferior abbey or not, Dugdale's Monasticon was refused for evidence, because the original records might be had in the Augmentation Office. (Cited in *Stainer* v. *Burgesses of Droitwich*, 1 *Salk.* 281). And on the argument of a special case, the counsel for the defendants, with a view to illustrate and explain the object and intention of a provision in an old act of Parliament, proposed to read an extract from a printed book found in the Bodleian Library, dated 1706, and professing to contain the rules and regulations of the Company of Mine Adventurers of England; and also a document from the Rolls' Chapel, inrolled there as a deed of a partnership of the Million Bank, dated 1698. The plaintiff's counsel objecting—the court refused to permit them to be read. (*Bank of England* v. *Anderson*, 4 *Scott*, 83).

Histories

But in *Neale* v. *Fry*, (cited in 1 *Salk.* 282, and *Bull. N. P.* 249, as *Neale* v. *Jay*), in order to show that a deed was forged which bore date 1 Ph. & M., in which all the titles were given to Philip which he used after the surrender of Charles V., chronicles were admitted to shew that he did not take those titles upon him till six months after the date of the deed. And in the case of *St. Catherine's Hospital*, (1 *Salk.* 282), Lord Hale admitted Speed's Chronicles to prove a particular point of history in the time of Edward III. (*Id.; and see Lord Brounker* v. *Sir R. Atkins, Skinn.* 14).

The Year Books may be evidence to prove the course of the court. (*R.* v. *St. Catherine's Hospital*, 1 *Salk.* 282; 1 *Stark. Ev. Part II. p.* 181).

Dugdale's Baronage is not evidence to prove a descent. (*Piercy's case*, 2 *Jon.* 164; 1 *Phill. Ev.* 23, 7th ed.)

Ancient Maps.]—An ancient map will be received as evidence where

Ancient maps.

1. *Public entries, &c.*

it has accompanied possession, and agreed with the boundaries as adjusted by ancient purchases. If two manors are in the hands of the same person, and a map is made by him, and afterwards one of the manors is conveyed to another person, and then, at a distant time, disputes arise as to the boundaries, the map so taken will be evidence: but if the person under whose direction the map was taken was possessed of only one manor, or a lord describes the boundaries of his waste, or the churchwardens cause a copperplate map to be made, wherein they describe land which an individual claims, to be a public highway, the map so taken is not evidence against the rights of persons not parties to the making of it. (*Peake's Ev.* 87, 95, *and cases there cited*).

In an action for breaking flood-gates, the defendant justified as lessee of a mill, which he held of the Bishop of W. For the defendant, old leases of the mill, granted by the Bishop of W., were produced from the bishop's registry, and read in evidence; but he was not permitted to put in an old map of the place in question, also brought from the Bishop of W.'s registry. (*Wakeman* v. *West*, 7 *C. & P.* 479).

Terriers, &c.

Terriers]—An old terrier, or survey of a manor, whether ecclesiastical or temporal, may be given in evidence when proved to have come from the proper repository; for there can be no other way of ascertaining the old tenures or boundaries. (*Bull. N. P.* 248; 1 *Phill. Ev.* 419; *Rosc.* 51).

A terrier of glebe is not evidence for the parson, unless signed by the churchwardens as well as the parson; nor these either, if they be of his nomination: and though it be signed by them, yet it seems to deserve very little credit, unless it be likewise signed by the substantial inhabitants. But, in all cases, it is certainly strong evidence against the parson. (*Bull. N. P.* 248).

An ecclesiastical terrier is evidence of the possessions of a church, if it has been regularly made and preserved in the proper repository. Ecclesiastical terriers are constantly received in questions of tithes: they are ecclesiastical records, made *in perpetuam rei memoriam*, and are as solemn instruments as any that can be produced on such subjects. (*Drake* v. *Smyth*, 5 *Price*, 380; 1 *Phill. Ev.* 419, 7th ed.)

Unless an ecclesiastical terrier be proved to have come from either the bishop's register office, (4 *Gwill.* 1406; 2 *Anstr.* 386), or the registry of the archdeacon of the diocese, (4 *Gwill.* 1450; 3 *Anstr.* 795), or from the church chest, (*Armstrong* v. *Hewitt*, 4 *Price*, 216), it cannot, in general, be admitted in evidence. A paper, therefore, purporting to be a terrier, found in the charter chest of a college, which had property in the parish, was thought to be inadmissible to disprove a modus. (4 *Gwill.* 1406).

Under particular circumstances, this rule respecting the custody of the terriers has been relaxed, and a terrier has been admitted, though not brought from one of the regular repositories, when the custody in another place has been satisfactorily explained. (1 *Phill. Ev.* 419). A terrier found in the registry of the dean and chapter of Lichfield has been admitted as evidence against a prebendary of Lichfield. (2 *Anstr.* 387).

Book of dean and chapter.

A book kept in the chapter house of the dean and chapter of Sarum, purporting to contain copies of leases granted by the dean and chapter, is, as a public book, evidence of those leases, for the purpose of reputation, without proof of possession under those leases. (*Coombs* v. *Coether*, *M. & N. C. N. P.* 398).

Rolls of manor.

Rolls of Manor, &c.]—The rolls of a court baron, or customary court, are evidence between the lord and his copyholders or tenants. (*Gilb.* 67). A book in which the steward of a manor entered the fines assessed, as well those paid as those unpaid held, not evidence for the lord of

the manor to shew what fines had been paid, although the steward had received it from his predecessor, and it was accessible to all the tenants. (*Dean and Chapter of Ely* v. *Caldecott*, 7 *Bing.* 433). Ancient writings, though not properly court rolls, but found among them, and delivered down from steward to steward, purporting to be made *ex assensu omnium tenentium*, have been held to be good evidence, to prove the course of descent within a manor: and this, although not signed by any of the tenants. (*Denn Goodwin* v. *Spray*, 1 *T. R.* 466; 1 *Phill. Evid.* 417. See *R.* v. *Thuscross*, 1 *Ad. & El.* 126). A presentment in a manor book will not be rejected because part of it has been cut off, when there is no ground to suspect that the mutilation is fraudulent. (*Evans* v. *Rees*, 10 *Ad. & El.* 151. See *post*, 402). 2. *Records, &c.*

Ship's Register.]—By 3 & 4 Will. IV. c. 55, s. 40, copies of oaths and declarations, and of extracts from the book of registry, shall be allowed and received as evidence upon every trial at law, without the production of the original or originals, and without the testimony or attendance of any collector or comptroller, or other person or persons acting for them respectively, in all cases as fully, and to all intents and purposes, as such original or originals, if produced by any collector or collectors, comptroller or comptrollers, or other person or persons acting for them, could or might legally be admitted or received in evidence. (See the enactment and cases, tit. "*Ships*," *Vol. V.* p. 1016). Ship's register.

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2. Records and Proceedings in Courts.

Records.]—Records are the memorials of the proceedings of the legislature, and of the Queen's courts of justice, preserved in rolls of parchment; and they are considered of such authority that no evidence is allowed to contradict them. (1 *Inst.* 127 *b*; *R.* v. *Hopper*, 3 *Price*, 495; 1 *Phill. Ev.* 316). Thus, on an indictment for assisting the escape of a convict out of prison, if the record of the conviction is produced by the proper officer, evidence is not admissible to dispute the statement in the record, or to shew that it has never been filed among the records of the county, even although the indictment refer to it with a *prout patet* as remaining among these records. (*Rex* v. *Shaw*, *Russ. & R.* 526). (2). Records in general.

But records are only conclusive evidence, generally speaking, against those who are parties to them, or their privies, and not strangers. (See *Duchess of Kingston's case*, 20 *How. St. Tr.* 538). A judgment obtained by A., in an action of use and occupation against B. and C., is no evidence to charge B. in a subsequent action brought by A. against him alone for the use and occupation of the same premises for a subsequent period. (*Christy* v. *Tancred*, 9 *M. & W.* 438). In matters of general concern, as customs, tolls, public ways, &c. they are conclusive. (*Rosc.* 80). They are not evidence of matters coming collaterally in question, nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the record. (20 *How. St. Tr.* 533).

Proof by Record itself, or Exemplification.]—When a record is the very *gist of an issue* in criminal cases, as in a plea of *autrefois acquit* or *convict*, it should be proved by production of the record itself, if it be a record of the *same* court in which the record is pleaded; or if a record of *another* court, by an exemplification under the great seal, which is of itself a record, and needs no further proof; (*Gilb. Evid.* 14; 10 *Co.* 93); or by an exemplification of it under the seal of the court, which needs no further proof. (*Gilb. Evid.* 19; *Tooker* v. *Duke of Beaufort*, *Sayer*, 297). Proof by record itself, or by exemplification.

The record of an *inferior* court, when the gist of the issue is proved by an exemplification of the record, certified under a writ of *certiorari*, issued by the superior court. (*Tidd*, 804).

In order to obtain an exemplification of a record of a concurrent supe-

2. *Records, &c.*

rior court a *certiorari* should be issued by the cursitor, directed to the chief justice of the superior court, requiring him to certify the record to the Court of Chancery; and the record being thereupon certified, an exemplification of it under the great seal is then sent by mittimus to the court requiring the exemplification, to be there used; (*Tidd*, 804; *Gilb. Evid.* 14, 15); and the same practice should be observed to obtain an exemplication of the record of a superior court to be produced to an inferior one.

So, where the exemplification of the record of an inferior court is desired to be obtained for the purpose of evidence in a superior court, as the Queen's Bench, a *certiorari* should be sued out either with the cursitor, or with the proper officer of the Court of Queen's Bench, directed to the chief justice, judge, or officer of the inferior court, in whose custody the record is supposed to be, requiring him to certify the record to the Court of Queen's Bench; and thereupon an exemplification of the record, under the seal of the inferior court, will be transmitted to the Court of Queen's Bench, to be there used as evidence.

When an ancient document, purporting to be an exemplification, is produced from the proper place of deposit, but has not, at the time of its production, the great seal affixed, it is still to be presumed that it is an exemplification, and may be read in evidence as such. (*Beverley* (*Mayor, &c.*) v. *Craven*, 2 *M. & Rob.* 140).

An exemplification under the seal of the Exchequer is evidence of a commission issued out of that court respecting Crown lands. (*Tooker* v. *Beaufort*, *Sayer*, 297). So, an exemplification of a recovery under the seal of the great sessions of Wales and of Chester, for such seals prove themselves. (*Olive* v. *Guin*, 2 *Sid.* 145; *Com. Dig. Ev. A.* 2).

On indictments for subsequent offence.

On indictments for a subsequent felony, after a previous conviction for felony, the legislature has dispensed with the usual formal proofs of the former conviction, thus: By statute 7 & 8 Geo. IV. c. 28, s. 11, upon an indictment for a subsequent felony, after a previous conviction for felony, a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court, or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer, is, upon proof of identity, sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same. And see a similar provision in the 7 & 8 *Geo. IV.* c. 30, s. 40, as to certain misdemeanours, provided for by that act. (*Post*, "*Malicious Injuries to Property*," *Vol. V.*) In these cases the mere production of the certified copy would suffice without further proof.

Examined copy.

Proof by examined Copy.]—When the record is not the gist of the issue, but is merely matter of inducement, as is most generally the case in criminal proceedings, it may be proved by an examined copy, or sometimes by an office copy. (*Gilb. Evid.* 26).

Record must be complete.

To make the copy sufficient the record must be complete, which is not so until delivered into court on parchment. Thus, to prove an allegation of an indictment having been found, it must be done by production of a caption regularly drawn up of record; and the minute-book kept by the clerk of the peace is no evidence of the finding of the bill, though no record be drawn up. (*R.* v. *Smith*, 8 *B. & Cress.* 341; and see *R.* v. *Browne*, 3 *C. & P.* 572). But where no record was kept at sessions, but the proceedings were entered in a minute-book, such book is evidence. (*R.* v. *Yeoveley*, 8 *Ad. & E.* 806). The production of the bill with an indorsement upon it will not support an allegation that the jury found a true bill. (*Porter* v. *Cooper*, 6 *C. & P.* 354). Nor will the indict-

ment with the finding of the jury indorsed upon it support a plea of *autrefois convict*. A record regularly made up must be produced. (*R.* v. *Bowman*, 6 *C.* & *P.* 101). So on an indictment for perjury, to prove that an appeal came on to be heard at sessions, it must be shewn that a record was regularly made upon parchment. (*R.* v. *Ward*, 6 *C.* & *P.* 366; *R.* v. *Smith*, *Id.* 356). However, to prove a matter which occurred before the same court sitting under the same commission, the minutes of the court were received. (*R.* v. *Tooke*, 25 *How. Str.* 446).

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A minute-book from which an entry of the proceedings at sessions is made, and from which book the roll containing the record of such proceedings is subsequently made up, is not a record. (*R.* v. *Bellamy*, *R.* & *M.* 171).

So the judgment in paper signed by the master is not evidence, for it is not yet become permanent. (*B. N. P.* 228; *and see Godefroy* v. *Jay*, 1 *M.* & *P.* 236; 3 *C.* & *P.* 192, S. C.; *Lee* v. *Meecock*, 5 *Esp.* 177; *Ayrey* v. *Davenport*, 2 *N. R.* 474).

The sworn copy should contain the whole of the record, (*B. N. P.* 228; 3 *Inst.* 173), unless in cases provided for by the 7 & 8 Geo. IV. c. 28, s. 30, relating to indictments for a subsequent offence, *supra*.

A copy of a copy is not evidence. (*B. N. P.* 226).

Copies of records are to be proved as other transcripts, by a witness who has compared the copy, line for line, with the original, or who has examined the copy, while another person read the original. (*Reid* v. *Margison*, 1 *Camp.* 470; *Rolf* v. *Dart*, 2 *Taunt.* 52). And it ought to appear that the original came from the proper place of deposit, or out of the hands of the officer in whose custody the records were kept. (*Adamthwaite* v. *Synge*, 1 *Stark. N. P.* 183; 4 *Camp.* 372, S. C.; 1 *Phill. Ev.* 366).

Where the original record is lost, then a copy *vetustate temporis aut judiciariâ cognitione roborata*, may be given in evidence. (*Bull. N. P.* 228).

Office copy.

Proof by Office Copy.]—An office copy is, in the *same court* and in the *same cause*, equivalent to a record; but in another court or in another cause it is not so; and in that case either the record itself, or an exemplification, or an examined copy, in case the record be not the gist of the issue, should be produced and proved. (*Denn* v. *Fulford*, 2 *Burr.* 1179).

Copy made by authorized office.

It is a general rule, that a copy authenticated by a person *appointed for that purpose* (viz. an *office* copy), is good evidence of the contents of the original, without any proof of its being an examined copy. (1 *Phill. Evid.* 367; *see Doe* d. *Ash* v. *Calvert*, 2 *Camp.* 390; *B. N. P.* 229).

But where the officer of the court is only intrusted with the custody of records, and is not authorized to make out a copy, he has no more authority for that purpose than a common person, and the copy must be regularly proved in a strict and regular mode. (1 *Phill. Ev.* 368).

The chirograph of a fine is evidence of the fine, the chirographer being appointed to make that copy; but it is not evidence of the proclamations, for of them the chirographer is not appointed to make a copy. (*B. N. P.* 229; *Gilb. Ev.* 23). The date of enrolment of a deed of bargain and sale indorsed by the clerk of the enrolments is conclusive evidence of the date. *R.* v. *Hopper*, 3 *Price*, 495; *and see Kinnersley* v. *Orpe*, 1 *Dougl.* 56; *Rowe* v. *Brenton*, 8 *B.* & *Cres.* 755).

A copy of the depositions of a witness taken at a judge's chambers, signed by the judge, and delivered out by his clerk, is admissible without proof of examination with the original. (*Duncan* v. *Scott*, 1 *Camp.* 101).

Verdict and postea.

Verdict and Postea.]—No verdict shall be given in evidence as binding on a person unless he be a party or privy to it; because otherwise a

2. *Records, &c.*

man would be bound by a decision, who had not the liberty to cross-examine; and nothing can be more contrary to natural justice, than that any body should be injured by a determination which he or those under whom he claims was not at liberty to controvert. (*B. N. P.* 232; *see Blakemore* v. *Glamorganshire Canal Company*, 2 *C. M. & R.* 133).

But a right of ferry is a matter in which the public are interested, and as to which, therefore, a verdict or judgment of a court of competent jurisdiction touching the same right is evidence, although between other parties. (*Pim* v. *Curell*, 6 *Mee. & W.* 234; *and see Brunel* v. *Thompson*, 1 *Car. & M.* 34).

A verdict will not be admitted in evidence, without likewise producing a copy of the judgment founded upon it; because it may happen that the judgment was arrested upon a new trial granted. But this rule doth not hold in the case of a verdict on an issue directed out of Chancery, because it is not usual to enter up judgment in such case; and the decree of the Court of Chancery is equally proof that the verdict was satisfactory, and stands in force. (*B. N. P.* 234). And if it be required to prove merely that a certain trial was had, the *nisi prius* record, with the *postea* indorsed on it, and regularly stamped and marked, is sufficient evidence for that purpose. (*Barnes*, 449; *Pitton* v. *Walter*, 1 *Stra.* 162; *and see Foster* v. *Compton*, 2 *Stark.* 364, 5). Where the *nisi prius* record was produced, with the minute of the verdict indorsed thereon by the associate, it was held sufficient proof of the trial, though no *postea* was drawn up; the associate stating none could be so, as a motion was pending for a new trial. (*R.* v. *Browne*, 3 *C. & P.* 572; *M. & M. C. N. P.* 315, S. C.; *and see R.* v. *Smith*, 8 *B. & Cres.* 341).

Inquisitions.

Inquisitions.]—On inquisitions of general concern, such as the return to the commission in Henry VIII.'s time, to inquire of the value of livings, the commission is a thing of such general notoriety, that it requires no proof. (*B. N. P.* 228; and see *Rowe* v. *Brenton*, 8 *B. & Cres.* 747). But, in general, on inquisitions of private matters, it is necessary to show that the inquiry has been made under proper authority, besides proving the return. (*Vin. Ab. Ev.* 42, A. b.). A copy of the judgment roll, containing an award of an elegit, and the return of the inquisition, is evidence of the elegit and inquisition. (*Ramsbottom* v. *Buckhurst*, 2 *M. & Sel.* 565). An inquisition *post mortem* is evidence, but not conclusive. (*Earl Thanet* v. *Foster*, *T. Jones*, 224).

The inquisition in general of a private matter affects only those persons who are parties or privies to it. But an inquisition of lunacy is evidence against third persons, though not conclusive. (*Sergeson* v. *Sealey*, 2 *Atk.* 412; *Faulder Spr.* v. *Silk*, 3 *Camp.* 126). And it is evidence on the trial of an indictment to shew the prisoner was insane at the time he committed the offence. (*R.* v. *Bowler*, 1 *Phill. Ev.* 356). As to the sheriff's inquisition to ascertain the ownership of property, *see Latkow* v. *Earner*, (2 *H. Bla.* 437); *Glossop* v. *Pole*, (3 *M. & Sel.* 175).

Writ.

Writ.]—Where a writ is the gist of the issue, which however is rarely the case in criminal proceedings, it must be returned into the court from whence it issued, and being then a record, should be proved by the record itself, or else, as is more usual, by an examined copy. (*B. N. P.* 234). But if the writ be matter of inducement merely, it is not necessary that it should be returned, or proved by an examined copy when not returned, (*Gilb. Ev.* 39); but the writ itself may be given in evidence.

If it has been returned, it should, in general, be proved by the record itself, or an examined copy. To entitle a party to go into secondary evidence of a writ after its return, it must be shewn that search has been made in the Treasury, and that subsequently to the return day the writ was in the possession of the opposite party, on whom notice to produce it has been served. (*Edmonstone* v. *Plaisted*, 4 *Esp.* 160). A copy of the judgment roll, containing an award of an elegit, and the return

of the inquisition, is evidence of the elegit and inquisition. (*Ramsbottom* v. *Buckhurst*, 2 *M. & Sel.* 565). 2. *Records, &c.*

Affidavits.]—An affidavit, whether voluntary or not, is evidence as an admission on oath against the party who made it, (*Gilb. Ev.* 51, 56; 7 *Taunt.* 577); and though proved only to be signed by the party, it will operate in evidence as an admission by him. (*Id.; B. N. P.* 238). Affidavits.

In the case of an immediate extent on an inquisition to find debts, the jury may find the fact of a debt being due to the Crown on the sole evidence of an affidavit, that the debt is due. (*Reg.* v. *Ryle*, 9 *M. & W.* 227).

When filed of record in the superior courts, they should be proved by examined copies, or produced. Affidavits not so filed can be proved only by production of the affidavits themselves, and by parol evidence of their having been sworn. (*Gilb Ev.* 56; *B. N. P.* 238). Upon an indictment for perjury in an affidavit, the affidavit must in all cases be produced, whether filed or not, and it must be proved in the same manner as an answer to a bill in equity under the same circumstances. (*Infra, B. N. P.* 238).

Rules and Orders of Courts of Law.]—Rules of court are proved by office copies, (*Selby* v. *Harris*, 1 *Ld. Raym.* 745; *Duncan* v. *Scott*, 1 *Camp.* 102; *M'Neil* v. *Perchard*, *Id.* 471, n.); it is not necessary to have them examined. A rule of court is evidence that the court have ordered as is therein stated; but it is not evidence of any matters in it which are the mere suggestions of the party who obtained it. (*Woodroffe* v. *Williams*, 6 *Taunt.* 19). A judge's order may be proved by the production of the order itself, or by an office copy of the rule by which it has been made a rule of court. (*Still* v. *Halford*, 4 *Camp.* 17). And where a court prints and circulates copies of its rules for the guidance of its officers, the production of one of those printed copies is good evidence, though not shewn to have been examined with the original which is kept under the seal of the court. (*Daniel* v. *Robson*, *M. & M.* 294). Rules and orders of courts of law.

Letters Patent.]—Letters patent should be proved by producing the letters patent themselves, or the exemplification of them under the great seal, which will be sufficient evidence without further proof. (1 *Phill. Evid.* 445). Letters patent.

Proceedings in Chancery.]—There are public matters that are not records, as *transactions in Chancery* and *court roll:* and of these copies may be given in evidence. (*B. N. P.* 234). Chancery proceedings.

The reason why the proceedings in Chancery are not records is this, because they are not the precedents of justice; for the judgment there is according to equity and good conscience, and not according to the laws and customs. And the reason why any record is of validity and authority is, because it is a memorial of what is the law of the nation: now Chancery proceedings are no memorials of the laws of *England*, because the chancellor is not bound to proceed according to the laws. (*B. N. P.* 234).

Bill.]—A bill in Chancery will not be evidence, except to shew that such a bill did exist, and that certain facts were in issue between the parties, in order to introduce the answer or the depositions of witnesses. (1 *Phill. Evid.* 341). It is not to be admitted as evidence in courts of law, to prove any facts either alleged or denied in the bill. (*Case of the Banbury Peerage*, 2 *Selw. N. P.* 685; *Roscoe*, 84). Bill.

On an indictment for perjury to an answer in Chancery to a bill before it was amended, to prove such bill it was held sufficient to put in the amended bill, and prove that the amendments were in the handwriting of a clerk in the Six Clerks' office, whose duty it would be to

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make them; but that it was not necessary to call the person who wrote the amendments. (*Rex* v. *Laycock*, 4 *C. & P.* 326).

Answer.

Answer.]—An answer in Chancery is good evidence against the defendant as an admission upon oath, and it must be taken together; therefore if, upon exceptions taken, a second answer has been put in, the defendant may insist on having that read, to explain what he swore in his first answer. (*B. N. P.* 237; *Gilb. Evid.* 50; *Roscoe*, 84). An answer will be evidence against all persons privy to the party making it, (16 *East*, 334); but the answer of a guardian is no evidence against an infant, nor is the answer of a trustee against the *cestui que* trust. (*B. N. P.* 237). Nor is an answer to a bill of foreclosure by a mortgagor who had twenty years before conveyed away his interest to a person who is no party to the mortgage or the proceedings in equity, admissible. (*Gulley* v. *Exeter* [*Bishop*], 2 *M. & P.* 266; 5 *Bing.* 171, S. C. *See Ford* v. *Gray*, *Salk.* 286). As to the answer of a co-defendant, *see* 3 *P. Wms.* 311; of a partner, *Peake*, 203; *Rooth* v. *Quin*, 7 *Price*, 198. *And see Morse* v. *Royal*, 12 *Ves. jun.* 355; *Studdy* v. *Sanders*, 2 *D. & R.* 347.

The answer may be proved by the production of the bill and answer, or of examined copies of them from the Six Clerks' office. (*Gilb. Evid.* 56; *and see Hennell* v. *Lyon*, 1 *B. & Al.* 182; *Hodgkinson* v. *Willis*, 3 *Camp.* 401). Even on the trial of an issue out of Chancery, office copies which had been used in the court of equity were considered inadmissible. (*Burnand* v. *Nerot*, 1 *C. & P.* 578). On an indictment for perjury in an answer, the answer itself must be produced, and it must be proved either that the party was sworn to it, or that the name subscribed to it is his handwriting, and that the name subscribed to the jurat is the name and handwriting of a master, or other person having authority for that purpose. (*R.* v. *Morris*, 2 *Burr.* 1189; *R.* v. *Benson*, 2 *Camp.* 508). The identity of the parties should be proved. Such identity may be established by a witness who has seen the handwriting of the defendant to the original answers, though it is not produced in court. (*Dartnall* v. *Howard*, *R. & M. C. N. P.* 169). If the name and description of the defendant at law agree with the name and description of the party answering in equity, it is *primâ facie* evidence of identity. (*Hennell* v. *Lyon*, 1 *B. & Al.* 182; *and see M. & M.* 176).

The answer may be read without the bill, if the bill has been lost and the proper officer prove he cannot find it in the proper office. (*Gilb. Evid.* 55; *and see Rowe* v. *Brenton*, 8 *B. & Cres.* 765).

And if an answer in Chancery is produced in evidence, the party against whom it is produced is entitled to have the whole bill in Chancery read, as part of his adversary's case. (*Pennell* v. *Meyer*, 2 *M. & Rob.* 98; 8 *Car. & P.* 470, S. C.)

When the answer is offered in evidence merely as an admission of the party on oath, it will suffice to prove it by an examined copy, without proof of a decree or of the party's handwriting. (*Dartmouth* v. *Roberts*, 16 *East*, 334; *and see Ewer* v. *Ambrose*, 4 *B. & Cres.* 25; 6 *D. & R.* 127, S. C.; *Highfield* v. *Peake*, 1 *M. & M.* 109).

Depositions in Chancery.

Depositions in Chancery.]—Depositions in Chancery are admissible in evidence in an action in the same matters between the same parties or their privies, where the witness is dead, insane, or cannot be subpœnaed, or has fallen sick by the way. (*B. N. P.* 239; *Gilb. Evid.* 60). But the mere circumstance of a witness being too ill to attend the trial is not, it seems, sufficient ground for reading his deposition in Chancery (*Doe* v. *Evans*, 3 *C. & P.* 219, *cor. Vaughan*, B.) They are also admissible against strangers in questions of a public or general nature, as relating to customs or tolls, &c., (*B. N. P.* 239): so they are admissible when used to impeach the testimony of a witness who made the depositions. (*Id.* 240). When depositions are made before an answer put in, they

are in general inadmissible, (*B. N. P.* 240); when otherwise, *Cazenove* v. *Vaughan*, (1 *M. & Sel.* 4). 2. *Records, &c.*

In order to prove the depositions, in general, the bill and answer must be first proved, and then the depositions must be produced and proved like other affidavits, not of record, proving the party's handwriting thereto, and that he was sworn, and that the name subscribed to the jurat is the name and handwriting of a Master, or other person having authority for that purpose. It should be proved that the party making the depositions is dead, insane, or cannot be found, or has fallen sick by the way. But it is not necessary to do this, or prove the bill and answer, if the depositions are offered in evidence as an admission merely, or to contradict a witness. (1 *Phill. Evid.* 375).

If the bill and answer are ancient and cannot be found, on proving that fact and due search, the production will be dispensed with. (*Gilb. Evid.* 64; 2 *Price*, 234, n.) And *see Rowe* v. *Brenton*, (8 *B. & Cres.* 765), where answers to interrogatories were allowed to be read, without producing the interrogatories, which could not be found. But generally depositions taken on interrogatories under a commission are not evidence without production of the commission, unless the depositions are of long standing. (*Bayley* v. *Wylie*, 6 *Esp.* 85).

As a general rule, it may be said, that in order to render depositions taken under any judicial proceedings evidence against a party, he must have had an opportunity to be present at the examination, and to cross-examine the witness. (*Attorney-General* v. *Davison*, 1 *Mac. & Y.* 160).

Decree.]—A decree in Chancery is evidence between the same parties or their privies. (*B. N. P.* 243). And on a trial touching the right of lands, decrees in Chancery between other parties concerning the same lands were held admissible in evidence to shew the character in which the possessor enjoyed the lands. (*Davies & ux.* v. *Lowndes* ten., 1 *Bing.* 606, *N. S.*) Decree.

So on the trial of a writ of right, decrees in Chancery, in causes between the tenant's father, and other persons not connected with the demandant, and to which proceedings the latter was neither party nor privy, were admitted for the purpose of shewing the character in which the tenant's father assumed and retained possession of the premises. (*Davies* dem. *Lowndes* ten., 7 *Scott*, 22; 5 *Bing. N. C.* 161.)

So on an issue as to the existence of an immemorial right of the deputy day-meters of the city of London to the exclusive right, by themselves and their servants, of measuring, shovelling, unloading, and delivering all oysters brought in any vessel for sale to the port of London, and to receive a reasonable compensation for so doing: a decree of a Court of Equity, in a cause between third parties, touching the same right, whereby an issue was directed to try whether certain sums were a reasonable recompense, was admitted in evidence. (*Laybourn* v. *Crisp*, 4 *Mee. & W.* 320; 8 *Car. & P.* 397). And it was also held, that the party producing the decree was not bound to put in the depositions in the cause, which were referred to (in the usual form) in the decree; but *semble* that the other party would be entitled to read the depositions as his evidence. (*Ib.*)

But interlocutory orders made in a suit between third parties touching the same right, and merely directing the continuance of a certain state of things *pendente lite* and not amounting to any final decree, are not admissible. (*Pim* v. *Currell*, 6 *M. & W.* 234).

The decree may be proved by an exemplification, or by a sworn copy, or when in paper by a decretal order, with proof of the bill and answer. (*Trowel* v. *Castle*, 1 *Keb.* 21; *B. N. P.* 244; 1 *Phill. Evid.* 373; *Peake, Evid.* 74; *Rosc.* 46). It seems, however, to be admissible in evidence, though it does not recite the bill and answer, and though no proof be adduced thereof, at least where it is given in evidence to prove an

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extrinsic collateral fact, (as that a decree was made), and not for the purpose of enabling the party to avail himself of its contents. (*Blower* v. *Hollis*, 1 *C. & M.* 393).

Order.

Order.]—The document delivered out by the registrar of the court of Chancery, as the order of the court, is the original order; and to make it evidence, it is not necessary that it should be compared with any book of the orders of the court. (*Ludlow* (*Mayor*) v. *Charlton*, 9 *Car. & P.* 242).

Proceedings in ecclesiastical courts.

Proceedings in Ecclesiastical Courts]—The sentences of ecclesiastical courts in matrimonial causes are in all cases evidence, and conclusive of the facts they therein establish, except in suits of jactitation. (*Duchess of Kingston's case*, 20 *How. St. Tri.* 538, 540, 543; *Bunting's case*, 4 *Rep.* 29 a.)

Depositions taken in an ecclesiastical court, in a cause within its jurisdiction, seem to be admissible in evidence upon the same footing as depositions in the Court of Chancery, the parties being the same, and having had an opportunity of cross-examining the deponents. (1 *Phill. Evid.* 359, 360). So a deposition taken in a cause between other parties will be admitted to be read, to contradict what the same witness swears at a trial. (*B. N. P.* 240).

The libel, answer, depositions, and sentence, in ecclesiastical courts, are proveable in the same manner as the proceedings in Chancery. (*ante* 395, 396; *Gilb. Ev.* 66, 67; *Com. Dig. Ev.* C. 3). In general to prove a sentence in such courts, the libel and answer should be produced. (*Stedman* v. *Gooch*, 1 *Esp.* 5). The minute-book of the Consistorial Court has been held sufficient evidence of a decree for alimony, without such decree being drawn up in form. (*Houliston* v. *Smith*, 2 *C. & P.* 25).

The practice of these courts is, it seems, proveable by parol evidence. (*Beaurain* v. *Sir W. Scott*, 3 *Camp.* 388).

Probate of a will.

Probate.]—The probate of a will, under the seal of the ecclesiastical court, is good evidence of its contents, where the will itself is of *chattels*, for there the probate is an original, taken by authority, and of a public nature; nor is the original will admissible for that purpose: but the probate of a will, devising *real property*, is not evidence of the contents of the will as to such property, even though the original is proved to be lost, the spiritual court having no power to authenticate such a devise, as far as it relates to land. (*B. N. P.* 245; 1 *Phill. Evid.* 325; *Doe* d. *Ash* v. *Calvert*, 2 *Camp.* 389; *Hoe* v. *Nesthrope*, 3 *Salk.* 154; 1 *Ld. Raym.* 154, S. C.; *Pinney* v. *Pinney*, 8 *B. & C.* 335). Nor is it admissible to prove declarations of the testator as reputation on a question of pedigree. (*Doe* d. *Wild* v. *Ormerod*, 1 *M. & Rob.* 466).

The mere production of the probate under the seal of the ecclesiastical court will suffice without further proof. (*Kempton* v. *Cross*, *Rep. T. Hardw.* 108).

An examined copy of the probate is evidence of the person there named being executor, as the probate is an original, taken by authority, and of a public nature, (*Hoe* v. *Nelthrope*, 3 *Salk.* 154; 1 *Ld. Raym.* 154, S. C.); but a copy of the will would not be evidence of that fact. (*B. N. P.* 246, *supra*).

It is not the practice in the ecclesiastical courts to grant a second probate if the first should be lost; but only to grant an exemplification from the record of the court, which exemplification will be evidence of the proof of the will. (*Shepherd* v. *Shorthouse*, 1 *Str.* 412).

The probate unrepealed is in general *conclusive* evidence of the facts whereof it is evidence: therefore the party shall not be permitted to allege that the will proved is not the last will and testament of the deceased. (*Allen* v. *Dundas*, 3 *T. R.* 125; *Gilb. Evid.* 73; *Chichester*

v. *Philips*, *T. Raym.* 404, 406). But he may give in evidence that the probate is forged, or that it was obtained by surprise, or revoked. (*Gilb. Evid.* 73, 74; *Chichester* v. *Philips*, *T. Raym.* 404; 2 *Sid.* 359). And in a late case an indictment for forging a will, probate of that will, though unrepealed, was held not conclusive evidence of its validity, so as to bar the prosecution. (*Rex* v. *Buttery*, *R. & R. C. C.* 342; *Rex* v. *Gibson*, *id.* 343); overruling *Rex* v. *Vincent*, (1 *Str.* 481). And the probate may be impeached, by showing that the ecclesiastical court had no jurisdiction, as that there were no *bona notabilia* within its jurisdiction, (*B. N. P.* 247); or that the supposed testator is alive. (*Allen* v. *Dundas*, 3 *T. R.* 130).

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To prove the probate revoked, an entry of the revocation in the book of the Prerogative Court is good evidence. (*Ramsbottom's case*, 1 *Leach, C. C.* 30, n. 3 ed.)

Letters of Administration.]—Such letters are evidence of the facts actually stated therein, but not of facts which can only be inferred therefrom, as the testator's death, &c. (*Thomson* v. *Donaldson*, 3 *Esp.* 63; 20 *How. St. Tri.* 533). The observations already made, *ante*, 56, as to a probate being *conclusive* evidence, will here apply.

Letters of administration.

The ecclesiastical court never grants an exemplification of letters of administration; but only a certificate that administration was granted. Such certificate, merely produced, would be of itself good evidence. So would the book of the ecclesiastical court wherein was entered the order for granting administration, (*Kempton* v. *Cross*, *Rep. T. Hardw.* 108; *B. N. P.* 246; *Elden* v. *Keddell*, 8 *East*, 187); and an examined copy of the act-book, stating the grant of letters of administration to the defendant, is proof of his being administrator, without notice to produce the letters. (*Davis* v. *Williams*, 13 *East*, 232.) The letters themselves would be good evidence. (*Kempton* v. *Cross*, *R. T. Hardw.* 108).

Proceedings in Admiralty Courts.]—The sentence of this court on a question of prize, over which it has exclusive jurisdiction, is conclusive of what is *positively* affirmed thereon; and being a proceeding *in rem*, binds all strangers as well as parties thereto. (*Park Ins.* 490; *Stirling* v. *Vaughan*, 2 *Camp.* 228; *Fisher* v. *Ogle*, 1 *Camp.* 418; *Dougl.* 574). But the sentence of such court is not conclusive as to the ground of condemnation, unless it be explicitly stated; it is not to be collected by inference, nor can it be left to uncertainty whether the vessel was condemned upon a ground which would be a good ground of condemnation by the law of nations, or on another which would only amount to a breach of the municipal regulations of the condemning country. (*Dalgliesh* v. *Hodgson*, 7 *Bing.* 495; 5 *M. & P.* 407, S. C.) So is such a sentence of a foreign admiralty court. (*Hughes* v. *Cornelius*, 2 *Show.* 232; *Bolton* v. *Gladstone*, 5 *East*, 160). And the sentence of an admiralty court sitting under a commission from a belligerent power in a neutral country, will not be recognised here. (*Havelock* v. *Rockwood*, 8 *T. R.* 268; *Donaldson* v. *Thompson*, 1 *Camp.* 429; *Roscoe*, 83).

Proceedings in Admiralty courts.

As to how far the libel, answer, and depositions are evidence, see *ante*, 54, 55, as to those proceedings in equity.

The libel, answer, depositions, and sentence, in the Admiralty Court, are proved in the same manner as the bill, answer, depositions, and decree, in a court of equity. (*Com. Dig. Evid.* 1, C., *ante*, 395, 396).

Proceedings in Foreign Courts.]—It seems that the sentence of a foreign court of competent jurisdiction, if evidence abroad, would be evidence here, on the same question and between the same parties. (*See* 1 *Ves.* 159; *Burrows* v. *Jemino*, 2 *Stra.* 733; *Stafford* v. *Clark*, 2 *Bing.* 380; *Tarleton* v. *Tarleton*, 4 *M. & Sel.* 20). The court will, in general, presume the sentence to be according to the justice of the case. (*Arnott* v. *Redfern*, 3 *Bing.* 353). But if it appears in the face of the proceed-

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ings, or it could be otherwise shewn, that the court had no jurisdiction, or that the sentence is founded on injustice, as where it appeared the defendant had never been summoned, the sentence would be inadmissible as evidence here. (*Buchanan* v. *Rucker*, 9 *East*, 192 ; 1 *Camp.* 63, S. C. ; *Williams* v. *Lord Bagot*, 3 *B. & Cres.* 786 ; *Douglas assignee of Stein* v. *Forrest*, 1 *M. & P.* 663 ; 4 *Bing.* 686, S. C. ; *Cavan* v. *Stewart*, 1 *Stark.* 525). And it does not seem that the sentence is in any case conclusive evidence here, not being a record in this country. (*See Walker* v. *Witter*, 2 *Dougl.* 1, 5 ; 2 *H. Bla.* 410 ; *Harris* v. *Saunders*, 4 *B. & Cres.* 411 ; *Douglas assignee of Stein* v. *Forrest*, 4 *Bing.* 686 ; 1 *M. & P.* 663 ; S. C.) : unless perhaps in the case of a sentence of a foreign admiralty court on a question of prize, *supra.* In *Guinness* v. *Carroll*, (1 *B. & Adol.* 459), it was made a question, but not decided, whether in an action on an Irish judgment, the grounds of such judgment are examinable by the courts here.

The certificate of a vice-consul has been compared to a foreign judgment, but it will not be admitted as evidence of the facts stated in it. (*Waldron* v. *Coombe*, 3 *Taunt.* 162).

The proceedings in a foreign court, whether in colonies belonging to this country or not, are to be proved by exemplifications under the seal of the court, if indeed it has a seal. The genuineness of the seal must be proved, (*Henry* v. *Adey*, 3 *East*, 221) ; and the seal must be used, though worn out. (*Cavan* v. *Stewart*, 1 *Stark.* 525). A copy signed by the clerk of the court would not be sufficient, even though it should be proved the court has no seal. (*Appleton* v. *Lord Braybrook*, 2 *Stark.* 6 ; 6 *M. & Sel.* 34, S. C.) If there be no seal ever used for the purpose of authenticating the proceedings of the court, then the proceedings must be proved by examined copies, (*Appleton* v. *Lord Braybrook*, 6 *M. & Sel.* 36) ; or distinct evidence should be given (if the fact) that the court has no seal, and verifies its judgments by the signature of the judge, proving such signature. (*Alves* v. *Bunbury*, 4 *Camp.* 28).

Irish records

Records of the courts in Ireland may be proved by examined copies, &c., in the same manner as the records in this country. Such copy must be examined with a *record;* and, where the witness produced to prove the copy stated that he examined it with a parchment roll shewn to him in a room over the four Courts at Dublin, without seeing from whence it was taken, or knowing the person who produced it to be an officer of the court, Lord *Ellenborough* refused to receive it in evidence. (*Adamthwaite* v. *Synge*, 4 *Camp.* 372 ; 1 *Stark.* 183, S. C.) An Irish judgment is no record here. (*Harris* v. *Saunders*, 4 *B. & Cres.* 411 ; 6 *Dowl. & R.* 471, S. C.)

Foreign law.

Foreign Laws.]—If an act done abroad be invalid by the law of the foreign country, it is so here ; (*see Melan* v. *Duke de Fitzjames*, 1 *B. & P.* 141 ; *Pedder* v. *Mac Master*, 8 *T. R.* 609 ; *Potter* v. *Brown*, 5 *East*, 124) ; but not *vice versâ.* In a suit between parties resident in England, on a contract made by them in a foreign country, the contract is to be interpreted according to the foreign law, but the remedy must be taken according to the law here. (*De la Vega* v. *Vianna*, 1 *B. & Adol.* 284). Our courts here take no notice of the revenue laws of a foreign independent state, not belonging to our sovereign. (*See James* v. *Catherwood*, 3 *Dow. & R.* 190, and cases there cited ; *Chit. on Bills*, 7 ed. 57, n. *e*). Nor do they take notice of foreign penal laws. (*Wolff* v. *Oxholm*, 6 *M. & Sel.* 99).

The laws of a foreign country, if not written, may be proved by the parol evidence of witnesses of competent skill ; (*sed vid. Boehtlincl* v. *Schneider*, 3 *Esp.* 58) ; if written, a copy properly authenticated must be produced. (*Clegg* v. *Levy*, 3 *Camp.* 166 ; *Millar* v. *Heinrick*, 4 *Camp.* 155 ; *per Gibbs*, C. J., *R.* v. *Picton*, 20 *How. St. Tr.* 514, 424 ; *Lacon* v. *Higgins*, 3 *Stark.* 178). The acts of state of a foreign government must be proved by copies examined with the public archives abroad ; a copy

printed and published abroad by the authorized printer of the foreign government will not, it seems, be sufficient. (*R.* v. *Holt*, 1 *Camp.* 65, n.; 5 *T. R.* 436, S. C.) 2. *Records, &c.*

An instrument, purporting to be a divorce under the seal of the synagogue at Leghorn, is not admissible, without previous proof of the law of the country; but Lord *Kenyon* permitted the party divorced to give parol evidence of her divorce at Leghorn, according to the ceremony and custom of the Jews there. (*Ganer* v. *Lady Lanesborough*, *Peake*, 17). Copies of entries from the books of a notary at Java, made and delivered out to the parties according to the law of that country, are not receivable in evidence in England. (*Brown* v. *Thornton*, 6 *Ad. & Ell.* 185.)

Proceedings in Inferior Courts.]—The judgment of an inferior court of *record* is as available, and conclusive in evidence for the same purposes, as a judgment of a superior court. The judgment of an inferior court, *not* of record, is equally available, save that it is not *conclusive* evidence, but may be controverted and avoided. (See *Walker* v. *Witter*, *Dougl.* 5). But the latter doctrine has been rendered somewhat doubtful by the cases of *Moses* v. *Macferlan* (2 *Bur.* 1009); *Briscoe* v. *Stephens* (2 *Bing.* 216); *Aldridge* v. *Haines*; (2 *B. & Adol.* 395; 1 *Stark. Evid.* 208; *Roscoe*, 86). And in *Thompson* v. *Blackhurst* (1 *Nev. & M.* 266), it was decided that the judgment of a county court is not conclusive. The existence of the facts necessary to the regularity of such a judgment is a question for the jury, although a motion made in the county court to set it aside for irregularity has been dismissed. (See *Huxham* v. *Smith*, 2 *Camp.* 19; *Barnes* v. *Winkler*, 2 *C. & P.* 345). Where it appears on the face of the proceedings that they have not been fair and regular, the judgment will not be available; as where it appeared the defendant had not been summoned, or the like; (*Williams* v. *Lord Bagot*, 3 *B & Cres.* 786); and the judgment may always be avoided by proof that the cause of action did not arise within the jurisdiction, (*Briscoe* v. *Stephens*, 2 *Bing.* 213), or that defendant, a debtor, did not reside within the district. (*Carratt* v. *Morley*, 2 *B.* 18). Where a cause is removed after judgment against a defendant, such judgment is not evidence against him in the superior court. (*Bollings* v. *Firby*, 9 *B. & C.* 762). Proceedings in inferior courts. In general.

The judgment of commissioners of Excise, on an information for an offence against an Excise law, is conclusive as to all the world, being upon a proceeding *in rem.* (*Fuller* v. *Fotch*, *Carth.* 346; *Roberts* v. *Fortune*, *Hay, &c.*, *Harg. Law Tracts*, 4468; 1 *Phill. Evid.* 355). So a judgment of commissioners of a court of requests. (*Aldridge* v. *Haines*, 2 *B. & Adol.* 395). The sentence of expulsion of a member of a college, by the master and fellows, is conclusive evidence of that fact, and cannot be impeached in a court of law. (*R.* v. *Grundon*, *Cowp.* 315; and see *Philips* v. *Bury*, 1 *Lord Raym.* 4; *Comb.* 265, S. C.; *Harg. Law Tracts*, 464).

In an action of trespass for levying poor-rate, the act was not permitted to impugn the appointing of overseers, there being no fraud. (*Penny* v. *Slade*, 5 *Bing. N. C.* 319).

The mere production of a *diploma* of doctor of physic, under the seal of one of the universities, is not of itself evidence to shew that the party therein named is entitled to that degree. (*Moises* v. *Thornton*, 8 *T. R.* 303). But in a late case, a sealed instrument, purporting to be a diploma of the degree of doctor of medicine, in the University of St. Andrews, with proof that a person at St. Andrews, calling himself the university librarian, had shewn, as the university seal, in a room which he stated to be the university library, a seal corresponding to that on the instrument produced, and a written paper, purporting to be an act of the university conferring the degree, was held sufficient evidence that the party was entitled to the degree. (*Collins* v. *Carnegie*, 1 *Ad. & Ell.* 695).

Judgments, and the proceedings in a court baron, county court, or other inferior court, not of record, may be proved by producing the How proved.

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books in which they are entered; (1 *C., M. & R.* 277); and if not made up in form, the minutes of the proceedings will be evidence, or else an examined copy of such proceedings or minutes. (See *Gilb. Evid.* 74, 20; *Com. Dig. Evid.* (C. 1); *Hennell* v. *Lyon*, 1 *B. & Al.* 185; *R.* v. *Smith*, 8 *B. & Cres.* 343; *Chandler* v. *Roberts, Peake, Evid.* 80). But this rule does not extend to proceedings at quarter sessions on the Crown side, which is not an inferior court. (*R.* v. *Smith, supra*). In proving the judgment, evidence of the previous proceedings should be adduced. (*Com. Dig. Evid.* (C. 1); 2 *W. Bla.* 836; *Thompson* v. *Blackhurst*, 1 *N. & M.* 266).

Court baron rolls.

Court Baron Rolls.]—The rolls of a *court baron* are evidence; for they are the public rolls by which the inheritance of every tenant is to be preserved: and they are the rolls of the manor court, which was anciently a court of justice relating to all property within the district. (*Bull. N. P.* 247; *Doe* v. *Hall*, 16 *East*, 208).

The copy of the *court roll of a manor*, under the steward's hand, duly stamped, is good evidence; so is an examined copy of the court roll. (*Doe* v. *Mee*, 4 *B. & Ad.* 617). For where the original itself is evidence, the immediate copy thereof is also good evidence. (*Skinner*, 584; *Hoe* v. *Nathorp*, 1 *Lord Raym.* 154; *Bull. N. P.* 247; *Gilb.* 75). By the Stamp Act (55 Geo. III. c. 184) court rolls need not be stamped; but surrenders and admittances *out* of court, and copies of surrenders and admittances in, must be duly stamped. A surrender *out* of court may be proved by an unstamped copy. (*Doe* v. *Mee*, 4 *B. & Ad.* 617). But quære, if any examined copy requires a stamp to be evidence? for the copy mentioned in the act seems the copy delivered by the steward under sect. 33. The court rolls, containing a presentment of a surrender out of court, are evidence of the surrender, without producing the original stamped surrender. (*Doe* v. *Olley*, 12 *A. & E.* 481). And a court roll, stating that the surrender was by power of attorney, would be secondary evidence of the power of attorney, if the power of attorney cannot be found after a sufficient search. (*Doe* d. *Counsell* v. *Caperton*, 9 *Car. & P.* 112).

Bankruptcy Proceedings.]—The record of all fiats in bankruptcy, and of all proceedings under the same, heretofore entered of record under the stat. 6 Geo. IV. c. 16, are removed into the Court of Bankruptcy, established by 1 & 2 Will. IV. c. 56, and are kept as records of that court; and all proceedings in bankruptcy and copies thereof, purporting to be sealed with the seal of that court, are to be received as evidence. (2 & 3 Will. IV. c. 114, s. 9). And by the stat. 5 & 6 Vict. c. 122, s. 25, in the event of the death of any witness deposing to the petitioning creditor's debt, trading, or act of bankruptcy, under any fiat in bankruptcy, his deposition, purporting to be sealed with the seal of the Court of Bankruptcy, or a copy thereof purporting to be so sealed, shall in all cases be receivable in evidence of the matters therein contained. And by sect. 22 a copy of a declaration of insolvency, purporting to be certified by the secretary of bankrupts, or his clerk, as a true copy, shall be received in evidence of such declaration having been filed. Also, by the 7 & 8 Vict. c. 96, s. 37, any petition for protection from process under that act, and any proceeding in the matter of such petition, purporting to be signed by a commissioner of the Court of Bankruptcy, or a copy of such petition, or other proceeding purporting to be so signed, shall in all cases be receivable in evidence of such proceedings. But depositions before the commissioners may be given in evidence against the person who made them, by producing and proving them, as in the ordinary case of an affidavit, without having the proceedings recorded. Parol evidence cannot be given of what the bankrupt said at his examinations. It is required by the act to be in writing, and such writing only can be received. (*R.* v. *Walters*, 5 *C. & P.* 141; *Jansen* v. *Wilson*, 1 *Dougl.* 257). In an action by a bankrupt against his assignees to try the validity of the commission, it was held that the assignment having been lost before it had been entered of record accord-

ing to the statute, secondary evidence of its contents might be given. (*Giles* v. *Smith*, 1 *C., M. & R.* 462. See *Scott* v. *Thomas*, 6 *C. & P.* 611). See the enactments, tit. "*Bankrupt*," *Vol. I.*

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Insolvency Proceedings.]—By 1 & 2 Vict. c. 110, s. 46, a copy of any order under that act vesting the estate and effects of any prisoner in the provisional assignee, or of the appointment of the assignee or assignees of such estate and effects, made upon parchment, purporting to have the certificate of the provisional assignee, or his deputy appointed for that purpose, indorsed upon it, and sealed with the seal of the court, shall in all courts and places, and without further proof, be recognised and received as sufficient evidence of such order and appointment having been made, and of the title of the provisional and other assignee or assignees under the same. (See *Delafield* v. *Freeman*, 3 *M. & P.* 704; 6 *Bing.* 294; 4 *C. & P.* 67). And by the same stat., s. 105, a copy of the petition, schedule, order of adjudication, and other orders and proceedings, purporting to be signed by the officer having the custody of them, or his deputy, certifying the same to be a true copy, and sealed with the seal of the court, is admissible in the same manner, without further proof of the same. And by the 5 & 6 Vict. c. 116, s. 11, the like evidence of the appointment of assignees under that act shall be received as sufficient to prove such appointments as is received by the laws now in force relating to bankrupts. The original order of adjudication will still be evidence. (*Northam* v. *Latouche*, 3 *M. & P.* 646; 4 *C. & P* 140, S. C.; see *Jones* v. *Nicholls*, 3 *M. & P.* 12; but see *Jefferey* v. *Robinson*, 5 *C. & P.* 230, tit. "*Insolvent*," *Vol. III.*) From *Nicholls* v. *Downes*, (4 *C. & P.* 330, 332, note), it should seem that certified copies of the schedule &c. under the Insolvent Debtors Act are only evidence for the insolvent and for his creditors, because they are the only persons entitled by the act to claim them; and it should seem that, to make the contents of a schedule evidence against an insolvent debtor, some evidence of identity is necessary, and it will not be sufficient that the schedule purports to be the schedule of a person of the name of the insolvent. Certified copies of the vesting order and of the appointment of the assignees, bearing the seal of the court, and purporting to be signed by G. C., "deputy for the provisional assignee," are sufficient, in pursuance of sects 46 and 105 of stat. 1 & 2 Vict. c. 110; and proof of the appointment of the deputy is not necessary. (*Jackson* v. *Thompson*, 2 *Q. B.* 887. See tit. "*Insolvent*," *Vol. III.*) The act is applicable to proceedings had under the former act of 1 Geo. IV. c. 119. (*Doe* d. *Phillips* v. *Evans*, 1 *C. & M.* 450). A paper, purporting to be a copy of the original discharge of an insolvent, and signed by the clerk of the proper officer of that court, with the impression of the seal affixed to it, is admissible in evidence to prove such discharge, without the production of the certificate thereof, or proof of its being an examined or attested copy. (*Carpenter* v. *Waite*, 3 *Moore*, 231; *Neal* v. *Isaacs*, 4 *B. & C.* 335; and see 3 *Car. & P.* 625). Such discharge could not be proved by parol evidence, or by an admission of the insolvent. (*Scott* v. *Clare*, 3 *Camp.* 236).

Insolvency proceedings.

Judgment of Quarter Sessions.]—A judgment by the quarter sessions, discharging an order of removal, (not for defect of form, but upon the merits), is conclusive as between the contending parishes, that the settlement of the pauper was not in the appellant parish at the time of the removal; but it is binding only on these parishes, not on a third parish. Nor is an order on an appeal respecting the settlement of it admissible on an appeal respecting the settlement of B., A.'s sister, though the point is the same in both appeals. (*R.* v. *Knaptoft*, 2 *B. & C.* 883). An order of removal executed, and not appealed against, is conclusive of the pauper's settlement at the time of the order, even as between third parishes who are not parties to that order. (*Rex* v. *Corsham*, 11 *East*, 388). And a judgment by the quarter sessions, confirming an order of removal, is conclusive upon the appellant parish as to all the world, and may be given in evidence against them by a third parish on any subsequent appeal. (1 *Phill. Ev.* 311, 312).

Judgment of quarter sessions in appeals.

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But though an order of sessions quashing an order of removal generally is conclusive evidence between the parties to the appeal, that, when the order of removal was made, the appellant parish was not bound to receive the pauper, it is only *primâ facie* evidence that the pauper was not settled in that parish, and therefore a subsequent cause of removal may be shewn. (*R.* v. *Inhabitants of Wick St. Lawrence*, 5 *B. & Adol.* 526).

The minute-book of a court of quarter sessions is not evidence of its proceedings; the record must be made up on parchment, and proved by an examined copy. (*R.* v. *Thring*, 5 *C. & P.* 507; *R.* v. *Ward*, 6 *C. & P.* 366; *R.* v. *Smith*, *Id.* 356; *Porter* v. *Cooper*, *Id.* 354; *ante*, 51). But where no record but the minute-book is kept by the sessions, such book is evidence. (*R.* v. *Yeovelly*, 8 *Ad. & E.* 806).

Convictions.

Convictions, &c.]—Convictions must be proved, like other records. (See *ante*, 391). In general they may be proved by examined copies. A *copy* of a conviction for killing game was agreed to be evidence in bar of an action brought for the same offence, and the defendant is entitled to such copy. (*R.* v. *Midlam*, 3 *Burr.* 1720; tit. "*Conviction*," *Vol. I.*) A copy may be obtained from the clerk of the peace. In prosecutions for second offences of a similar kind, the legislature has, in some instances of *misdemeanours*, as by 7 & 8 Geo. IV. c. 30, s. 40, made a copy of the former conviction, certified by the proper officer to be a true copy, good evidence of such conviction; (*ante*, 392; tit. "*Malicious Injuries to Property*," *Vol. V.*; and as to convictions for second *felonies*, *ante*, 392). In such cases the mere production of such a copy would suffice.

Effect of, in evidence.

A conviction in a court of criminal jurisdiction is conclusive evidence of the facts contained in it, if it comes collaterally in controversy in a court of civil jurisdiction; yet an acquittal in such court is no proof of the reverse. (*Bull. N. P.* 245).

But where the conviction has been procured on the evidence of the party who seeks to avail himself of it in a civil action, such conviction is inadmissible; and it even seems doubtful whether it is admissible when it has been procured entirely on the credence of others. (*Hillyard* v. *Grantham*, 2 *Ves.* 246; *Gibson* v. *Macarty*, *R. T. Hardw.* 311; *Hathaway* v. *Barrow*, 1 *Camp.* 151; *Brook* v. *Carpenter*, 3 *Bing.* 300). But the better opinion seems to be, that such a record is inadmissible as *res inter alios*, without reference to the witnesses on whose testimony the conviction was obtained. (*Blakemore* v. *Glamorgan Canal Co.*, 2 *C. M. & R.* 139; *Roscoe*, 136). But where convictions operate *in rem* they are admissible in a suit *inter alios*, even though they were obtained on the evidence of the person who tenders them as proof. (*Davis* v. *Nest*, 6 *C. & P.* 167).

How far a protection to parties.

With respect to how far a conviction will protect the convicting magistrate, it is a general rule and principle of law, that, where justices of the peace have an authority given to them by an act of Parliament, and they appear to have acted within the jurisdiction so given, and to have done all that they are required by the act to do, in order to originate their jurisdiction, a conviction drawn up in due form, and remaining in force, is a protection in any action brought against them for the act so done. (*Per Abbott*, C. J., in *Basten* v. *Carew*, 3 *B. & Cres.* 652; and see *Cave* v. *Mountain*, 1 *M. & G.* 257; *R.* v. *Bolton*, 1 *Q. B.* 66). In trespass against magistrates for taking and detaining a vessel, a conviction by them, under the bum-boat act, is conclusive evidence that the vessel in question is a boat within the meaning of the act, and properly condemned. (*Brittain* v. *Kinnaird*, 4 *Moore*, 50; 1 *B. & B.* 432; *Gow's C. N. P.* 164, S. C.) So where, in trespass against two magistrates, it appeared that the defendants, upon the complaint of the surveyors of the highways, appointed for the whole parish, convicted the plaintiff of neglecting to do statute duty, and issued a warrant to levy the penalty under which the act complained of was done; it was held, the conviction being good on the face of it was a sufficient defence, and that the plaintiff could not, in this action, try the question whether the land which he occupied was exempt from the burden of repairing

the roads in other parts of the parish. (*Fawcett* v. *Fowlis*, 7 *B. & Cres.* 394; 1 *M. & R.* 102, S. C.) So where, in trespass against two magistrates, for giving the plaintiff's landlord possession of a farm, as a deserted farm, the defendants produced in evidence a record of their proceedings, under the 11 Geo. II. c. 19, s. 16, which set forth all such circumstances as were necessary to give them jurisdiction, and by which it appeared that they had pursued the directions of the statute, it was held such record was not traversable, and was a conclusive answer to the action. (*Basten* v. *Carew*, 3 *B. & Cres.* 653; 5 *D. & R.* 558, S. C.; *and see Strickland* v. *Ward*, 7 *T. R.* 631; *Gray* v. *Cookson*, 16 *East*, 21; *Anon.* 1 *B. & Adol.* 382; *Aldridge* v. *Haines*, 2 *B. & Adol.* 395).

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Convictions.

On the other hand, where, upon the face of the conviction, it appears the magistrate has assumed a jurisdiction over a matter which is altogether out of his cognizance, or has been guilty of plain and manifest excess of his jurisdiction, the conviction will not protect him. See cases in *Gow, C. N. P.* 167. Where a person was convicted in four several convictions for exercising his ordinary calling on a Sunday, contrary to 29 Car. II. c. 7, it was held, that, as a man could only commit one offence under the statute on the *same* day, the three latter convictions were void; and it being an excess of jurisdiction, an action lay against the magistrate. (*Crepps* v. *Durden*, *Cowp.* 640; *Gray* v. *Cookson*, 16 *East*, 21; *and see Hill* v. *Bateman*, 1 *Stra.* 710; *Groome* v. *Forrester*, 5 *M. & Sel.* 314; 1 *Mac. & Y.* 469; *Rosc.* 403; *post*, "*Game*," *Vol. III.*)

As to the mode of drawing up convictions, and the party's remedy when improperly drawn up, *see ante*, "*Conviction*," *Vol. I.*

Acquittal.

Acquittal.]—The acquittal of a party cannot afford evidence like a conviction, for it does not ascertain any precise fact, and may have proceeded merely on the ground that sufficient evidence was not produced. (1 *Phill. Evid.* 338; *B. N. P.* 245. *See* "*Acquittal*," *Vol. I.*)

An acquittal, where directly put in issue by the pleadings, should in general be proved by an examined copy of the record of acquittal, and that would be the correct mode of proving it in all cases where a record of acquittal has been formally drawn up as it ought to be.

Orders of justices.

Orders of Justices.]—Orders of magistrates do not, it seems, in general come within the above doctrine of evidence relative to convictions, and parol evidence is admissible to support or controvert them, where the party disputing them is no party to them. In *Welsh* v. *Nash*, (8 *East*, 402), Lord *Ellenborough* said, with regard to an order of justices for diverting a highway, that justices cannot make facts by their determination, in order to give themselves jurisdiction contrary to the truth of the case; and see *Brittain* v. *Kinnaird*, (1 *B. & B.* 439). In a late case, where an order of justices, requiring the stewards of a friendly society to re-admit A. B., who had been expelled, recited that it had appeared to the justices that the rules of the society had been enrolled at the quarter sessions; on the trial of an indictment against the stewards for disobeying the order, it was held the recital was no evidence of the enrolment of the rules; the defendants never having concurred in, or assented to, the order. (*R.* v. *Gilkes*, 8 *B. & Cres.* 439; *see post*, "*Order*," *Vol. III.*; *R.* v. *Clayton*, 3 *East*, 58; *and see Gray* v. *Cookson*, 16 *East*, 23, *per Bayley*, J.)

An order of sessions, upon an appeal between two parishes, respecting the settlement of pauper A., is not admissible on the trial of an appeal touching the settlement of B., his sister, another pauper, on a suggestion that the point at issue was precisely the same in both appeals. (*R.* v. *Knaptoft*, 4 *D. & R.* 469; 2 *B. & C.* 883, S. C.)

On the other hand, it seems that where the party disputing the order is a party thereto by his having obtained such order, or appeared to resist it, such order, unappealed against, is conclusive against him. (*R.*

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v. *Hinxworth, and R.* v. *Caling, Cald.* 42, 472). So, an order quashed is conclusive between the parties. (*R.* v. *Leigh, id.* 29).

In an action on 7 & 8 Geo. IV. c. 31, against the hundred of B., for the felonious demolition of *Nottingham Castle*, by rioters, the plaintiff produced in evidence certain orders made by the justices at the quarter sessions for the county, in which the castle was described as being in that hundred. No proof was given that the justices who made those orders were resiants in the county :—Held, that the orders were admissible as evidence of reputation, for that the justices from the nature of their office must be presumed cognizant of the subject. (*Duke of Newcastle* v. *Hundred of Broxtowe*, 4 *B. & Adol.* 273).

Certificates of justices, &c.

Certificates of Justices, &c.]—The certificate of a justice of the peace as to a highway being in repair, has been received in evidence. (*Rex* v. *Mawbey, T. R.* 619).

The certificates of bishops with respect to marriage, general bastardy, excommunication, orders, and other the like matters, are received in evidence; (*Co. Lit.* 74; *Rex* v *Mawbey*, 6 *T. R.* 637; *Rosc.* 89; *see Rex* v. *Bathwick*, 2 *B. & Adol.* 639); so are the certificates of the judges in Wales respecting the practice of their courts. (*Rex* v. *Mawbey*, 6 *T. R.* 638).

The certificate of a British consul abroad is not admissible as evidence here. (*Waldron* v. *Coombe*, 3 Taunt. 162; *Exp Church*, 1 *D. & R.* 324; *ante*, 400). The certificate from commissioners under the act for settling the debts of the army has been held conclusive evidence of the facts found therein. (*Moody* v. *Thurston*, 1 *Stra.* 481; *Attorney-Gen.* v. *Davison*, 1 *Mac. & Y.* 160). So has an old parish certificate. (*Rex* v. *Whitchurch*, 7 *B. & Cres.* 573; 1 *M. & R.* 472, S. C.; *Rex* v. *Ryton*, 5 *T. R.* 259; *post*, 417).

Depositions before magistrates.

Depositions &c. before Magistrates.]—The information and depositions of witnesses upon oath taken before magistrates in felonies and misdemeanors, when put into writing, and certified, and returned as directed by the 7 Geo. IV. c. 64, ss. 2, 3, (*post*, title "*Examination*," become evidence of the facts deposed to, upon the general principles before stated, the effect of the statute in rendering the evidence admissible being simply that of giving it the stamp of being taken in the course of a judicial proceeding.

But, in order to make such depositions evidence, it must be proved that the party deposing is either dead, insane, unable to travel, (1 *Hale*, 586; *Rex* v. *Eriswell*, 5 *T. R.* 710; *Kel.* 55; 2 *Hawk.* c. 46, s. 15; 1 *Chit. C. L.* 586), or kept away by the defendant's contrivance, (*Kel.* 55; *Reg.* v. *Gutteridge*, 9 *Car. & P.* 471), or that he cannot be found; (*B. N. P.* 239; 2 *Hawk.* c. 46, s. 18; *sed vid. Kel.* 55; 3 *C. & P.*); so that there is no possibility of obtaining his attendance. It is not sufficient to prove that the witness is too ill to attend the assizes, though this may be a good ground for postponing the trial. (*Rex* v. *Savage*, 5 *C. & P.* 143). But where the witness is bedridden, and there is no probability of his being able to attend, his depositions have been admitted. (*Rex* v. *Hogg*, 6 *C. & P.* 176). They could not, it seems, be read in the case of petit treason if the witness were living, even although he were unable to travel, or were kept out of the way by the prisoner, or by his procurement; for the stat. 5 & 6 Ed. VI., which extends to all treasons, requires that the witnesses, if living, shall be examined in person upon the trial, in open court. (*Fost.* 337). In order to make them evidence, they must also have been duly taken according to the requisitions of the statute; in the presence of the defendant, (*Rex* v. *Paine*, 1 *Salk.* 281; 1 *Ld. Raym.* 729, S. C.; 5 *Mod.* 183; 1 *Leach*, 502); on the oath of the accuser and witness, (1 *Hale*, 586; *B. N. P.* 242); and reduced into writing, (1 *Leach*, 309); and signed by the magistrate, (7 Geo. IV. c. 64, s. 3; *Leach* v. *Simpson*, 5 *M. & W.* 312). But where

the depositions of a prosecutor and other witnesses are taken on the same sheet of paper, one signature by the magistrate at the end is sufficient. (*Reg.* v. *Osborne*, 8 *Car. & P.* 113). In such cases they will be admissible, although the witness was not at the time apprehensive of approaching dissolution. (1 *Leach*, 458). It is not necessary they should be signed by the witness. (*Rex* v. *Fleming*, 2 *Leach*, 996. *Per Parke*, B., in *Leach* v. *Simpson*, 5 *M. & W.* 312). Where the depositions were not wholly taken in the presence of the prisoner, but the witness afterwards in his presence was re-sworn, and the depositions repeated and signed, the judges held that they were, under these circumstances, admissible evidence, for the prisoner had an opportunity of cross-examining the witness. (*Rex* v. *Smith*, *R. & R. C. C.* 339; *Rex* v. *Smith*, 2 *Stark.* 208: *Holt*, *C. N. P.* 614, S. C. *But see Rex* v. *Forbes*, *Holt*, 599). And where the testimony of a person, under apprehension of immediate dissolution, has been taken by a magistrate in the absence of the party indicted, though it cannot be read as an examination under the statute, it may be received as a dying declaration with the same degree of authority as if made to a private individual. (1 *Leach*, 361, 503; *Rex* v. *Inhabitants of Eriswell*, 3 *T. R.* 713. *See Rex* v. *Callaghan*, 1 *M'Nally*, 385). And the information of an accomplice, duly taken, may, in case of his death, be read in evidence against the prisoner, (1 *Leach*, 12), though it will not be conclusive, unless corroborated by other testimony. (*Ib.*) As to Dying Declarations, see *ante*, 380.

The depositions of a witness for the prosecution, who has gone to sea, cannot be read in evidence on the part of the prisoner, without consent on the part of the prosecutor; but with such consent they may be. (*Reg.* v. *Hagan*, 8 *Car. & P.* 167). But on trial of a case of felony, where the prosecutor is bed-ridden, and not likely to be ever able to attend the assizes, his deposition taken by the committing magistrate, in the presence of the prisoner, may be given in evidence. (1 *Car. & M.* 145).

Where an accomplice who could not read made a statement before the committing magistrate, and at the trial gave evidence falling very short of what he said before the magistrate, the judge allowed his deposition to be shewn to him, but would not allow the deposition to be read to him by the officer of the court, that the counsel for the prosecution might examine upon it. (*Reg.* v. *Beardmore*, 8 *Car. & P.* 260).

The reading, on the part of the prosecution, of the prisoner's statement, returned by the magistrate at the end of the depositions, does not give the prisoner the right to consider the depositions as in evidence on the part of the prosecution, though it appears that they were all taken before the statement was made; but if the prisoner wishes to have the whole or any particular part of the depositions read, he must read it as his evidence. (*Rex* v. *Pearson*, 7 *Car. & P.* 671).

The depositions taken before the magistrate against a prisoner cannot be read against him, where the witness has died since the examination, unless the depositions in cross-examination have been correctly taken and returned to the court. Depositions taken in cross-examination, at a subsequent time to those in chief, and not signed by the committing magistrates, are so irregular as to prevent the whole depositions from being read against a prisoner; and this, although both are proved by one of the committing magistrates to have been accurately taken. (*Reg.* v. *France*, 2 *M. & Rob.* 207).

In order to make the depositions evidence, they must be proved by the magistrate or his clerk, or otherwise to have been truly taken. (*Anon. Kel.* 55, *Fost.* 337; *post*, 408). A witness at the trial gave evidence, which was different from her deposition before the magistrates. The deposition was signed by a mark, which she denied to be hers. Neither the magistrate nor his clerk was at the trial; but a constable proved that he was at the examination, and heard her deposition read over to her, and saw her with a pen in her hand, but did not see her

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make her mark. He also proved the magistrate's signature; and after reading the deposition (which preceded his own which he had signed), he stated, that he believed that that was the deposition which was read over to the witness. This deposition was allowed to be read to the witness by the officer of the court, for the judge to examine her upon it. (*Reg.* v. *Hallett*, 9 *Car. & P.* 749).

And in a case affecting the life of a party, it is very desirable that a magistrate who took the depositions against the prisoner with his own hand should be called as a witness, before the depositions are read, to prove the correctness of what he took down; but it is not absolutely necessary, in point of law, that he should be called, and the depositions may be read on proof of his hand-writing. (*Reg.* v. *Pikesley*, 8 *Car. & P.* 124; *Reg.* v. *Wilshaw*, 1 *Car. & M.* 145).

They may be used by the defendant as well as against him. (2 *St. Tri.* 622, *&c.*; 2 *Hawk.* c. 46, s. 22).

The depositions of a witness taken in a judicial proceeding, in the presence of the party there charged, are not admissible in *another* proceeding against that party, merely on the ground that he was present and had the opportunity of cross-examining. (*Melon* v. *Andrews*, *M. & M. C. N. P.* 336; *see Rex* v. *Hollingshead*, 4 *C. & P.* 242, *note there*; *Rex* v. *Appleby*, 3 *Stark.* 33). But the deposition of a witness since deceased is, when regularly taken under the statute, admissible on the trial of a different offence from that with which the prisoner was then charged, as where the deposition was taken on a charge of assault, and is given in evidence on a trial for murder. (*Rex* v. *Smith*, *R. & R.* 339; 1 *Leach*, 458. *And see Leach* v. *Simpson*, 5 *M. & W.* 309; 7 *Dowl.* 513).

In *Rex* v. *Reed*, *M. & M. C. N. P.* 403, it was held, that though the examination of a prisoner taken in writing is inadmissible by reason of irregularity, parol evidence of what he said at the time of the examination might be received. (*Sed vid. Rex* v. *Hollingshead*, 4 *C. & P.* 242, and note; *see Phillips* v. *Wimburn*, 4 *C. & P.* 273). In *Rex* v. *Harris*, (1 *R. & M. C. C.* 338), parol evidence was admitted to add to the written examination of the prisoner in a part which the magistrate did not hear, and the same rule would perhaps apply to depositions. (*See per Parke*, B., in *Leach* v. *Simpson*, 5 *M. & W.* 312. *But see* 1 *Phill. Ev.* 352; 2 *Russ.* 662).

If it be shewn that depositions were regularly returned by the magistrates to the proper officer, and it be proved by the latter that they cannot be found, after diligent search, the prisoner's counsel may cross-examine from copies of them, those copies being proved to be correct by the magistrates' clerk. (*Reg.* v. *Shelburn*, 9 *Car. & P.* 277).

A justice of the peace should not allow depositions to be framed in the words of a clause in the statute under which a party is committed. (*Mill* v. *Collett*, 3 *M. & P.* 242).

Before coroners

Depositions before Coroners.]—The depositions taken before coroners on inquisitions, when put into writing, and certified and returned as required by the 7 Geo. IV. c. 64, s. 4, (*ante*, "*Coroner*," *p.* 32), become evidence of the facts deposed to, under the same conditions as depositions before magistrates are evidence. It seems, however, that they differ from those taken before justices in this respect, that they are admissible though taken in the absence of the prisoner; because the coroner is an officer appointed on the behalf of the public, and will be presumed to have acted properly in all matters within his jurisdiction. (*Rex* v. *Inhabitants of Erswell*, 3 *T. R.* 713, 722; *B. N. P.* 242). But the justice and legality of this distinction have been questioned by text writers of high authority. (2 *Stark. Ev.* 278, 2nd edit.; 2 *Russ.* 661; *ante*, "*Coroner*," *Vol. I.*)

A coroner's jury, on the investigation of a case of homicide, returned a verdict "of wilful murder against *some person or persons unknown*." The coroner returned the deposition he had taken to the Central Criminal

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Court. On application by the counsel for a prisoner indicted for the murder of the same person, for a copy of such depositions, it was held, that although the coroner could not in such a case have been compelled to return them, under statute 7 Geo. IV. c. 64, s. 4, yet that having done so, the judges had power, by their general power as a court of justice, to order a copy to be given if they thought it material to the interests of justice. (*Rex* v. *Greenacre*, 8 *Car. & P.* 32).

A. B., a witness on a coroner's inquest, made a deposition, in which she stated a conversation with the prisoner on their seeing a placard relating to the murder of the deceased, and also stated that she called the prisoner a murderer; and also that she slept with the prisoner, and that he beat her and gave her two black eyes. The prisoner made a statement before the coroner, which was taken down in the following form:—"Prisoner admits sleeping with witness, blacking her eyes, seeing the placard and his treating her, and her calling him a murderer." This statement of the prisoner, and also the deposition of A. B., were received in evidence against the prisoner on his trial for the murder, and it was held no objection in point of law to the receiving of the statement in evidence that it began "Prisoner admits," although that is a very improper way of taking down a prisoner's statement. (*Reg.* v. *Roche & Blackney*, 1 *Car. & M.* 341).

On prosecutions for leaving seamen abroad.

Depositions on Prosecutions for leaving Seamen abroad.]—By the stat. 9 Geo. IV. c. 31, s. 30, depositions taken under commissions granted by the Court of King's Bench, for the examination of witnesses abroad, in prosecutions for leaving seamen behind in the colonies or elsewhere, are made evidence. (*Post*, "*Seamen*," *&c. Vol. V.*; "*Malicious Injuries to Persons*," *Vol. V.*)

Depositions under mutiny act as to settlement.

Depositions under Mutiny Act as to Settlement.]—In the *Mutiny Acts* there is always inserted a clause rendering the examination of a non-commissioned officer or soldier, under certain circumstances, legal evidence to be received upon a question of settlement.

Such enactment usually is as follows: "That it shall and may be lawful for any justice of the peace for the county, town, or place where any non-commissioned officer or soldier shall be quartered in that part of G. B. called England, in case such non-commissioned officer or private soldier have either wife or child or children, to cause such non-commissioned officer or soldier to be summoned before him, in the town or place where such non-commissioned officer or soldier shall be quartered, in order to make oath of the place of his last legal settlement (which oath such justice is hereby empowered to administer); and such non-commissioned officer or private soldier as aforesaid is hereby directed to obey such summons, and to make oath accordingly; and such justice is hereby required to take the examination of such non-commissioned officer or soldier in writing, and to give an attested copy of the examination so taken before him to the person so examined, to be by him delivered to his commanding officer, in order to be produced when required; which said examination and such attested copy shall be at any time admitted in evidence, as to such last legal settlement, before any of H. M.'s justices of the peace, or at any general or quarter sessions of the peace; although such non-commissioned officer or soldier be dead or absent from the kingdom: Provided always, and in case any non-commissioned officer or private soldier shall be again summoned to make oath as aforesaid, then, on such examination or such attested copy thereof being produced by him, or by any other person on his behalf, such non-commissioned officer or soldier shall not be obliged to take any other or further oath with regard to his legal settlement, but shall leave a copy of such examination, or a copy of such attested copy of examination, if required."

This enactment is to be construed *strictly;* and therefore no other at-

2. *Records, &c.*

tested copy is legal evidence, while the original is in existence, except that given to the soldier. (*Rex* v. *Clayton le Moors*, 5 *T. R.* 706; 1 *Phill. Evid.* 358).

The original examination may be evidence, (*Rex* v. *Worley*, 6 *T. R.* 534); but it must be authenticated as being genuine by proof that the persons attesting are magistrates, or at least that the signatures are the hand-writing of those whose they purport to be, or the like. (*Rex* v. *Bilton cum Harrowgate*, 1 *East*, 13).

The examination of the soldier is to be received in evidence as to his settlement, though he be dead or absent from his country when the appeal as to such settlement is tried. (*Rex* v. *Warminster*, 3 *B. & Al.* 121).

In a late case, where an examination of a soldier taken before two magistrates was tendered in evidence to prove his settlement, but it did not appear by the examination itself, or by other proof, that the soldier, at the time when he was examined, was quartered in the place where the justices had jurisdiction, it was held not admissible. (*R.* v. *All Saints, Southampton*, 7 *B. & Cres.* 785; 1 *M. & R.* 663, S. C.)

Deposition of an infirm pauper as to his settlement, and report to petty sessions. 49 Geo. 3, c. 124.

Depositions of infirm Paupers as to Settlement.]—By stat. 49 Geo. III. c. 124, s. 4, it is enacted, That whenever it shall happen that any pauper is, by age, illness, or infirmity, unable to be brought up to the petty sessions to be examined as to his or her settlement, it shall be lawful for any one magistrate acting for the district where such pauper shall be, to take the examination of the said pauper, and to report the same to any other magistrate or magistrates acting for the said district, and for the said magistrates upon such report to adjudge the settlement of the said pauper, and make and suspend the order of removal, as fully and effectually to all intents and purposes as if the said pauper had appeared before two magistrates. (*Vide "Poor," Vol. IV*).

Depositions of prisoners as to their settlements. 59 Geo. 3, c. 12.

Depositions of Prisoners as to Settlement.]—And by stat. 59 Geo. III. c. 12, s. 28, it shall be lawful for any justice of the peace to take in writing the examination on oath of any person having a wife or child, who shall be a prisoner in any gaol or house of correction, or in the custody of the keeper of any such gaol or house of correction, or who shall be in the custody of any constable or other peace officer, by virtue of any warrant of commitment, touching the place of his or her last legal settlement: and such examination shall be signed by such justice taking the same, and shall be received and admitted in evidence, as to such settlement, before any justices, for the purpose of any order of removal, so long only as the person so examined shall continue a prisoner. (*Vide "Poor," Vol. IV*).

Depositions after death of witness.

As observed by Mr. Phillips in his valuable treatise on Evidence, Vol. II. p. 71, the general rule, respecting the admissibility of depositions after the death of the witness, is, that they are not evidence, unless they have been taken judicially, and unless the party, whose interests would be affected by them, had an opportunity of being present and cross-examining the deponent. It is, therefore, now clearly established that the *ex-parte* examination of a pauper concerning his settlement, taken on oath before magistrates, is not admissible upon a question of settlement, as evidence against the appellant parish. (*R.* v. *Nuneham Courtenay*, 1 *East*, 373; *R.* v. *Ferry Frystone*, 2 *East*, 54; *R.* v. *Abergwilly*, *ib.* 63). The objection against their admissibility is, not that the magistrates have no power to administer an oath, but that the examination is *ex-parte*, obtained at the instance of overseers, whose parish would be benefited by the removal, and behind the backs of the appellants, who received no notice of the proceeding, and had not the benefit of a cross-examination. (*See R.* v. *Eriswell*, 3 *T. R.* 725). And there are no words (under which paupers in the statute 13 & 14 Car. II. c. 12

are removed) expressly requiring the justices to take down any examination in writing. (1 *Phill. Evid.* 7 ed. 376).

3. *Private writings, &c.*

Examinations in Bastardy.]—It has been held, that where a pregnant woman died after examination taken under stat. 6 Geo. II. c. 31, but before an order of filiation, such examination is admissible in evidence on an application to the quarter sessions to make an order of filiation on the putative father; and that, if not contradicted, it ought to be considered as conclusive. (*R.* v. *Ravenstone*, 5 *T. R.* 373). It is to be observed, however, that in the case of *R.* v. *Eriswell*, (3 *T. R.* 707), where two justices had taken the examination of a pauper relative to his settlement, but did not remove him thereon, and he afterwards became insane, the judges of the Court of King's Bench were equally divided on the question, whether two other justices could remove his family on that examination. It may perhaps be a ground of distinction, that in the 13 & 14 Car. II. c. 12, s. 1, under which the latter examination was taken, the justices are merely empowered to *remove*, whereas the 6 Geo. II. c. 31, expressly directs the examination of the woman to be taken in writing upon oath, and renders it alone sufficient *primâ facie* evidence against the putative father, so far at least as to authorize and require the justices to commit the person so charged, until he gives security.

Examination in bastardy.

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(3). Private Writings.

The next class of written evidence consists of *private writings*, as deeds, entries in private books, and other writings made by individuals, relating to themselves or others, in their own private capacity.

(3) Private writings.

We have already noticed the doctrine that the best evidence is required in all cases; also, that written evidence is superior to verbal evidence; such being the case, it is a general rule that, where a party, in making out his case, shews that any part of it rests on written testimony, as a deed, agreement, or other instrument of a private nature, he must produce and prove it. (*Fenn* v. *Griffiths*, 6 *Bing.* 533; *Brewer* v. *Palmer*, 3 *Esp.* 213). In some cases, however, as we have seen, as where the original is lost, or in the hands of the opposite party, who refuses after notice to produce it, secondary and sometimes parol evidence thereof is admissible. For those cases, and the course to be pursued therein, *see ante.*

We will now consider the mode of proving the execution of a deed, agreement, or other written instrument of a private nature.

Proof of Execution]—It is not absolutely necessary that the witness should see the deed or instrument absolutely executed; as if the obligor of a bond sign a bond, and then tell a certain person that he had signed it and sealed it, and bid him witness it, which he does—that is a sufficient proof of due execution of the bond. (*Powell* v. *Blackett*, 1 *Esp.* 97; *Park* v. *Mears*, 2 *Bos. & Pull.* 217; 1 *Phill. Evid.* 468). But this mode of attesting a deed was commented upon as careless and improper in *Lloyd* v. *Freshfield*, (2 *C. & P.* 325).

Proof of execution.

Proof of handwriting, when admissible, will afford presumptive evidence of the due execution. (*Grellier* v. *Neale, Peake*, 146; *Adams* v. *Kerr*, 1 *Bos. & P.* 361).

An attesting witness may refresh his memory as to the execution from seeing his own attestation. (*Maugham* v. *Hubbard*, 8 *B. & Cres.* 16; 2 *M. & R.* 5, S. C.)

Sealing is essential to a deed, but it is not material with what seal it is sealed. Any number of parties may use the same seal. (*Com. Dig. Fait.* A. 2). If there be twenty to seal one deed, and they all seal upon one piece of wax and with one seal, yet if they make distinct and

3. *Private writings.*

several prints, this is a sufficient sealing, and the deed is good. (*Shep. Touchst.* c. 4, p. 55 ; 1 *Phill. Ev.* 7 ed. 467). But where a deed is executed under the authority of a power requiring it to be under the hands and seals of the parties, they must use separate seals. (*Rex* v. *Austrey*, 1 *Phill. Ev.* 453 ; 6 *M. & Sel.* 319, S. C.)

No particular form or ceremony is necessary as to the delivery of a deed. It will suffice if a party testifies his intention in any manner to deliver the deed into the possession of the other party. (1 *Phill. Ev.* 467 ; *Thorogood's case*, 9 *Rep.* 137 ; *Com. Dig. Evidence* [A. 3]).

When a party to a deed cannot write, and desires another person to write his name for him, who does so in his presence, this is a good execution by the party himself, and in such case the subscription of the name by the agent and his authority must be proved. (*Rex* v. *Lognor*, 4 *B. & Adol.* 647).

Identity.

Some evidence to identify the party who executed the instrument must be given. (*B. N. P.* 171 ; *Middleton* v. *Sandford*, 4 *Camp.* 34). Proof of the party's signature proves only this fact, that the instrument in question was executed by a person in a certain name; it does not prove the other important fact, that the party who signed is that person. Slight evidence would be sufficient. Evidence that the party was present when the instrument was prepared by the subscribing witness will serve to connect him with the instrument. (*Nelson* v. *Whittall*, 1 *B. & Al.* 19 ; and *see* 1 *C. & M.* 515 ; 1 *Phill. Evid.* 466, 475). The place of residence of the party described in the instrument will frequently afford evidence of identity. (*Mitchell* v. *Johnson*, *M. & M.* 176 ; and *see Whitelock* v. *Musgrove*, 1 *C. & M.* 513). Though the attesting witness's personal attendance cannot be had, the proof of signature of such witness will not dispense with other proof of identity of the party executing. (*Whitelock* v. *Musgrove*, 1 *C. & M.* 511 ; and see the cases there collected. *See Kay* v. *Brookman*, 3 *C. & P.* 555 ; *M. & M.* 286, S. C. ; *Page* v. *Mann*, *id.* 79).

Where an attesting witness.

Where there is an attesting Witness.]—If the execution of the instrument was attested by a subscribing witness, he alone is competent to prove the execution, because he may be able to state the time of the execution, and some circumstances of the transaction, which may be material, and unknown to other persons. On an indictment, therefore, against an apprentice for enlisting himself in the army, all the judges held, that the indenture of apprenticeship could not be proved by the master, but that it was necessary to call one of the subscribing witnesses. (*Rex* v. *Jones*, 2 *East*, *P. C.* 822 ; 1 *Leach*, 174, S. C. ; *see also Rex* v. *Harringworth*, 4 *M. & Sel.* 350 ; 1 *Phill. Evid.* 346 ; *Barnes* v. *Trompowsky*, 7 *T. R.* 266). A notice, if attested, must be proved by the attesting witness. (*See Doe* v. *Durnford*, 2 *M. & Sel.* 62). So must a warrant or other instrument. (*Higgs* v. *Dixon*, 2 *Stark.* 180).

Attesting witness.

The subscribing witness must be called, even though the party has admitted the due execution of the instrument, unless where the execution is made an admission in the cause. (*Fall* v. *Dunning*, 4 *East*, 53 ; *Johnson* v. *Mason*, 1 *Esp.* 89 ; *Milward* v. *Temple*, 1 *Camp.* 375). To prove a deed, the attesting witness must be called, though it be an issue directed to try a question as to the date, and not the existence, of the deed. (*Edinburgh* v. *Crundell*, 2 *Stark. N. P. C.* 284). And even if the deed be cancelled, the subscribing witness must be called to prove the execution. (*Per Lord Kenyon*, C. J., in *Breton* v. *Cope*, *Peake's Rep.* 30 ; 1 *Phill. Evid.* 446, 447).

But the hand-writing in the register of a marriage may be proved without calling the attesting witness, where the object only is to identify the parties named in the register. (*Wyatt* v. *Rochfort*, 1 *Jurist*, 592.)

Subscribing witnesses are not essential to a deed. (*Com. Dig. Fait.* B. 4 ; *Peake's Evid.* 96).

Where there are two or more subscribing witnesses, it suffices to call

one of them. (*See Peake's Evid.* 103; *Doe* d. *Stutsbury* v. *Smith*, 1 *Esp.* 391; *Skin.* 413; *Holdfast* d. *Anstey* v. *Dowsing*, 2 *Stra.* 1253). Or if *all* are dead, or their production dispensed with on other sufficient grounds, proof of the handwriting of one will suffice. (*Adam* v. *Kerr*, 1 *B. & P.* 360).

3. *Private writings.*

A subscribing witness to any instrument is compellable to give evidence respecting it; for the person, by subscribing his name, undertakes to give evidence at a proper time and in a proper manner. (*Clarke* v. *Elwick*, 10 *Mod.* 333; 1 *Stra.* 1, S. C.)

Where proof by attesting witness dispensed with.

If the subscribing witness be dead, it is sufficient to prove his handwriting; but it must also be proved that he is dead. (*Anon.* 12 *Mod.* 607; *Nelson* v. *Whittal*, 1 *B. & Al.* 19).

Illness is not a sufficient reason for dispensing with the attendance of a subscribing witness; such a relaxation of the rule has not yet been made, and it would obviously be liable to great abuse. (*Harrison* v. *Blades*, cor. Lord *Ellenborough*, C. J.; 3 *Camp.* 458; 1 *Phill. Evid.* 456; *see Jones* v. *Brewer*, 4 *Taunt.* 46. If the subscribing witness be blind, (*Wood* v. *Drury*, 1 *Ld. Raym.* 734; *Pedler* v. *Paige*, 1 *M & Rob.* 258) (*a*); or insane (*Currie* v. *Child*, 3 *Camp.* 283), he need not be called, after proving these facts and his handwriting. So, if he has absconded from his creditors, (*Crosby* v. *Percy*, 1 *Taunt.* 364; 1 *Camp.* 303, S. C.), or after a criminal charge, (*Falmouth* v. *Roberts*, 9 *M. & W.* 469), or if by some criminal act he, subsequently to the execution of the deed, become incompetent as a witness in a court of justice. (*Jones* v. *Mason*, 2 *Stra.* 833). So, if he become so by interest subsequently accrued by operation of law, (*Buckley* v. *Smith*, 2 *Esp.* 697; *Godfrey* v. *Norris*, 1 *Stra.* 34; *Goss* v. *Tracy*, 1 *P. Wms.* 289); but not by interest given to the witness by the party desirous to prove the execution, (*Hovill* v. *Stephenson*, 5 *Bing.* 493; *Forrester* v. *Pigou*, 1 *M. & Sel.* 9); or by interest at the time of the execution (*Swire* v. *Bell*, 5 *T. R.* 371); unless that was known to the party who requested the witness's attestation. (*Honeywood* v. *Peacock*, 3 *Camp.* 196) So if the witness denies all knowledge of his attestation or execution (*Talbot* v. *Hodson*, 7 *Taunt.* 251; *Boxer* v. *Rabeth*, *Gow's C. N. P.* 175; 2 *Camp.* 435), or where the name is fictitious (*Fasset* v. *Brown*, *Peake*, 23), or where he attested, not knowing what he was about (*M'Craw* v. *Gentry*, 3 *Camp.* 232), he need not be called on proving those facts.

If the attesting witness be out of the jurisdiction of the court, as not to be amenable to its process, as in Ireland or elsewhere, (*Prince* v. *Blackburn*, 2 *East*, 252; *Hodnett* v. *Forman*, 1 *Stark.* 90); or where he cannot be found after diligent inquiry, (*Cunliffe* v. *Sefton*, 2 *East*, 183), his personal attendance may be dispensed with. And it is not necessary to shew that his absence is caused by collusion with the other party. (*Willman* v. *Worrall*, 8 *Car. & P.* 380). In a late case, where the subscribing witness to the acceptance of a bill of exchange was one of the acceptor's family, and could not be served with a subpœna in consequence of the conduct of that family, the bill was read without his evidence. (*Hill* v. *Phillips*, 5 *C. & P.* 356).

What inquiry for, sufficient.

Strict proof is required of diligent inquiry; and the sufficiency of the inquiry is a question for the jury. (*Bampton* v. *Paulin*, 4 *Bing.* 264). But where such due inquiry has been made, it will be no objection to the receipt of evidence of his handwriting, that a letter not disclosing his retreat had been received from him a few days before the trial.

(*a*) But see the case of *Croak* v. *Freth*, 8 *Car. & P.* 197, 2 *M. & Rob.* 262, in which Lord *Abinger* held, that if since the execution of a deed the subscribing witness to it has become blind, a party suing on the deed must, if *non est factum* be pleaded, still call the subscribing witness; and it is not enough to prove the handwriting of the parties executing the deed, and of the subscribing witness.

3. *Private writings.*

(*Morgan* v. *Morgan*, 9 *Bing.* 359; 2 *M. & Scott*, 491, S. C.) Where it was proved that a commission of bankruptcy had been taken out against the attesting witness, a bankrupt, to which he had never appeared, Lord *Ellenborough*, C. J., said this was sufficient, as he would presume from his not surrendering, that he was out of the kingdom. (*Wardell* v. *Fermor*, 2 *Camp.* 282). A witness, on being subpœnaed, said he would not attend, and the trial was twice put off in consequence of his absence. Search was then made at the defendant's house and in the neighbourhood; and upon information at the defendant's, that the witness was gone to Margate, and inquiry made there without success; under these circumstances his personal attendance was not required. (*Burt* v. *Walker*, 4 *B. & Al.* 697). An ineffectual inquiry after an attesting witness to a bond, at the residence of the obligor and obligee, has been held sufficient. (*Cunliffe* v. *Sefton*, 2 *East*, 183). So has an inquiry after witness at his usual place of residence, and information there that he has absconded. (*Crosby* v. *Percy*, 1 *Camp.* 303; *sed vid. Pitt* v. *Griffith*, 6 *Moore*, 538, which is to the contrary). So has an inquiry at the Admiralty, and information there, by the last report, that the witness was serving on board a ship. (*Parker* v. *Hoskins*, 2 *Taunt.* 223). So where the witness went abroad twenty years ago, and has never since been heard of. (*Doe* v. *Johnson*, 1 *Phill. Evid.* 453; *ante*, 374). So, proof by a father that his son, who had parted from him on bad terms, had enlisted in the 11th Dragoons, and that he had inquired at the War Office, and received for answer that the regiment had sailed for India, was held sufficient to let in evidence of his handwriting, as subscribing witness to an agreement. (*Wyatt* v. *Bateman*, 7 *Car. & P.* 586—Coleridge). And other circumstances, from which it may be fairly inferred he has left the kingdom, will suffice; as, where a witness expressed an intention of leaving the kingdom, having reason for so doing, to avoid a criminal prosecution, and his relations not having seen him since he expressed his intention of going. (*Ray* v. *Brookman*, 3 *C. & P.* 555; *and see Evans* v. *Curtis*, 2 *C. & P.* 296).

Where attesting witness does not attend.

As to the mode of proving the execution of the instrument, where the subscribing witness does not attend the trial, and such attendance is dispensed with, that will be effected simply by proving the handwriting of the attesting witness, as also the circumstances which are necessary to dispense with his attendance. There is no necessity for proving the handwriting of the party himself. *Ray* v. *Brookman*, 3 *C. & P.* 555; *Nelson* v. *Whittall*, 1 *B. & Al.* 19; *Gough* v. *Cecil*, *Selw. N. P.* 516, n.) But where there are two attesting witnesses, and one of them cannot be produced, being dead, &c., proof of the handwriting of the latter will not suffice, unless the production of the other also be dispensed with on similar grounds. (*Cunliffe* v. *Sefton*, 2 *East*, 183; *M'Craw* v. *Gentry*, 3 *Camp.* 232). Proof of the absent attesting witness's signature will suffice, though the party to the instrument executed only by his mark. (*Mitchell* v. *Johnson*, *M. & M. C. N. P.* 176; *and see Page* v. *Man*, *id.* 79; *Doe* d. *Wheeldon* v. *Paul*, 3 *C. & P.* 613). Some evidence of the identity of the absent subscribing witness should be given. As to the mode of proving the attesting witness's handwriting, see *infra*.

Where an instrument is proved by a copy, as secondary evidence, the attesting witness to the original need not be called. (*Poole* v. *Warren*, 8 *Ad. & E.* 582).

Where party refuses to produce an attested document

And if a party, after notice, refuses to produce a document which is proved to be in his possession, the opposite party may give secondary evidence of its contents, as in other cases, without calling the subscribing witness. (*Cook* v. *Tanswell*, 2 *Moore*, 513; 8 *Taunt.* 450; 1 *Moore*, 465, S. C.) And where the defendant, after notice, refused to produce the deed at the trial until an examined copy was tendered in evidence, when he then produced the original, it was held he could not insist on

such original being proved by the attesting witness. (*Jackson* v. *Allen*, 3 *Stark. N. P. C.* 74).

3. *Private writings.*

Where there is no Attesting Witness, &c.]—In cases where there is no subscribing witness to the instrument, or where the subscribing witness has not any knowledge of the execution (which is the same thing as if there were no witness at all, *Fitzgerald* v. *Elsee*, 2 *Camp.* 635; *Lemon* v. *Dean*, *ib.* 636, n. *per Le Blanc*, J., in the case of a promissory note; *Talbot* v. *Hodson*, 7 *Taunt.* 251; *ante*, 413), or where the name of a fictitious person is inserted, (*Fasset* v. *Brown*, *Peake's Rep.* 23; *ante*, 413,) or where the attesting witness was interested at the time of the execution of the deed, or becomes so subsequently, and continues so at the time of the trial, (*Swire* v. *Bell*, 5 *T. R.* 371; *ante*, 413), or where the person who has put his name as subscribing witness did so without the knowledge or consent of the parties, (*M'Craw* v. *Gentry*, 3 *Camp.* 232; *Wright* v. *Wakeford*, 4 *Taunt.* 220; *ante*, 413), the execution may be proved by proving the handwriting of the party to the deed; or by any person present at the execution, though he is not indorsed as a witness. *Com. Dig.* tit. *Evidence*, B. 3.) or by proof of an admission of the party himself that he executed that deed.

Where no a testing witness.

Handwriting.]—In general, the witness, to prove a handwriting, should have gained his knowledge from *having seen the party write;* but under some circumstances that is not necessary; as where the handwriting to be proved is of a person residing abroad, evidence by a party who has frequently received letters from him in a course of correspondence would be admitted to prove it, though he had never seen him write. (*Bull. N. P.* 236).

Handwriting.

The mark of a person who cannot write, may also be proved by a person who has seen him make his mark, and is acquainted with it. (*George* v. *Surrey*, *M. & M.* 516).

It is not necessary that a witness should swear that the writing intended to be given in evidence is actually the handwriting of any particular individual; but his *belief* that it is such is sufficient.

Belief.

This belief must be founded upon rational grounds; either he must have seen the individual in question often write his name, or have received letters from him in the course of correspondence, not having actually seen him write, or the like.

Handwriting.

And if a witness, called to prove the handwriting of a paper, say that he believes it to be of the handwriting of the defendant from its contents, and from other circumstances, he may be asked what those circumstances are. (*Reg.* v. *Murphy*, 8 *Car. & P.* 297).

But he is to form his opinion merely, and that only from looking at the handwriting in question; and in that case the opinion of the witness will, it seems, go as evidence to the jury, although he may have seen the party write his name but once. (*Garrells* v. *Alexander*, 4 *Esp.* 37; *Burr* v. *Harper*, *Holt*, *N. P. C.* 420; *Willman* v. *Worrall*, 8 *Car. & P.* 380). Unless indeed where it has been written in the witness's presence for the purpose of making him competent to give evidence in the suit. (*Stranger* v. *Serle*, 1 *Esp.* 14).

On an issue as to defendant's signature, witnesses were called for him, who deposed, that they knew his handwriting, and did not believe the signature to be his. Plaintiff proposed to ask each witness whether a paper, placed on the witness-box, was signed by defendant, purposing by such inquiry to test the knowledge of the witnesses by their agreement or disagreement; this was not allowed, the paper not being in evidence for any other purpose. The objection would not have been removed by independent proof that the paper proposed to be laid before the witnesses was in fact written by defendant. (*Griffits* v. *Ivery*, 11 *Ad. & E.* 322; *and see Hughes* v. *Rogers*, 8 M. & W. 123).

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In a case where a witness who had never seen the defendant, but had corresponded with a person of the defendant's name living at *Plymouth Dock*, where defendant resided, and where, according to other evidence, there was no other person of that name, stated that the handwriting of certain letters was that of the person with whom he had corresponded, it was held, that this evidence was sufficient to admit the letters to be read against the defendant. (*Harrington* v. *Fry*, 2 *Bing.* 179; 9 *Moore*, 344, S. C.; 3 *Stark. C. N. P.* 90; *R. & M. C. N. P.* 90, S. C.; *and see Tharpe* v. *Gisburne*, 2 *C. & P.* 21; *and R.* v. *Slaney*, 5 *C. & P.* 213). In a late case, where a witness for the defendant stated that he had never seen the person in question write, but that his name was subscribed to an affidavit which had been used by the plaintiff, and that he had examined that signature so as to form an opinion, which enabled him to say it was genuine, *Park*, J. held this to be sufficient. (*Smith* v. *Sainsbury*, 5 *C. & P.* 196).

Mere opinion.

To prove the handwriting of a member of Parliament, the opinion of a clerk employed to inspect franks, who never had occasion to apply to the member to verify his handwriting, has been held insufficient. (*Batchelor* v. *Honeywood*, 2 *Esp. R.* 714).

Where the signature of an attesting witness to a will was in dispute, and the witness, who was alive, and called as a witness at the trial, admitted that certain specimens put into his hands were of his writing, and that signatures made to depositions in the Ecclesiastical Court were also his, an inspector at the Bank, skilled in handwriting, who had gained a knowledge of the witness's handwriting by inspection of these admitted specimens before the trial, was called to prove that the attestation to the will was not in the handwriting of the witness. The evidence was held to be admissible, *per* Lord *Denman*, C. J., and *Williams*, J.; inadmissible, *per Patteson* and *Coleridge*, Js. (*Ib. Doe* d. *Mudd* v. *Suckermore*, 2 *Nev. & P.* 16; 5 *Ad. & Ell.* 703).

Where a witness stated that he had merely seen the party subscribe his name to another instrument to which he was attesting witness, and was unable to form an opinion respecting the handwriting in question without examining such other instrument, it was held insufficient; for it was evident he could not speak to the handwriting except by comparison. (*Filliter* v. *Minchin*, *Manning's Index*, 131).

Similitude of hand.

It seems to be generally holden, since the reversal of the attainder of *Algernon Sidney*, that similitude of hands is not evidence in any criminal case, whether capital or not capital. (2 *Hawk.* c. 46, s. 15; *R.* v. *Crosby*, 1 *Ld. Raym.* 39; 12 *Mod.* 72, S. C.; 9 *Howell's St. Tri.* 817; 4 *Esp.* 37; *Allport* v. *Meek*, 4 *C. & P.* 267). Unless, perhaps, where the writing is so ancient that no witness can be found to prove it. (1 *Phill. Evid.* 492, 7 *ed.*; *Macferson* v. *Thoytes*, *Peake, N. P. C.* 20; *B. N. P.* 236; 8 *Price*, 652; *R. & M. C. N. P.* 143). As where a parson's book was produced to prove a *modus*, the parson having been long dead, a witness who had examined the parish books, in which was the same person's name, was permitted to swear to the similitude of the handwriting, for it was the best evidence for the nature of the thing, as the parish books were not in the plaintiff's power to produce. (*B. N. P.* 236). Or unless, perhaps, where there is already contradictory evidence of the fact as to the handwriting. (*See Allesbrook* v. *Roach*, 1 *Esp. N. P. C.* 352; *Da Costa* v. *Pym*, *Peake's Evid.*) If evidence by comparison be properly admitted in such cases to prove the genuineness of a signature, the same kind of evidence must also be admissible to prove that the signature is not genuine. (1 *Phill. Evid.* 492).

Evidence of handwriting by *comparison* is inadmissible, except either where the writing acknowledged to be genuine is already in evidence in the cause, or the disputed writing is an ancient document. These exceptions are of necessity. (*Doe* d. *Perry* v. *Newton*, 1 *Nev. & Per.* 1; 5 *Ad. & El.* 514).

3. *Private writings.*

The rule, however, as to comparison of handwriting, does not apply to the court or the jury, who may compare the handwriting of the document tendered with that of any other already properly in evidence in the cause. (*Griffiths* v. *Williams*, 1 *Cr. & Jerv.* 47; *Solita* v. *Yarrow*, 1 *M. & Rob.* 133). But it is not allowable to put in evidence a document unconnected with the case, though undoubtedly in the handwriting of the party, merely for the purpose of enabling the jury to make such a comparison. (*R.* v. *Morgan*, 1 *M. & Rob.* 134, n.; *and see Griffiths* v. *Williams*, 1 *C. & J.* 47; *Allport* v. *Meek*, 4 *C. & P.* 267; *Hughes* v. *Rogers*, 8 *M. & W.* 123).

Refreshing memory.

A witness who has seen a party write may refer to that writing to refresh and strengthen his recollection, and not merely for the purpose of comparison. (*Burr* v. *Harper*, *Holt*, *C. N. P.* 420; *Maugham* v. *Hubbard*, 8 *B. & Cres.* 16). *See post*, as to refreshing memory.

Imitated handwriting.

The best evidence to prove a signature or writing to be a forgery is to be derived from calling the party himself whose writing is alleged to have been forged, provided he be a competent witness. But this is not absolutely necessary, and the handwriting may be disproved by any person acquainted with the genuine handwriting. (*R.* v. *Hughes*, 2 *East*, *P. C.* 1002; 1 *R. & M. C. C.* 380).

Inspector of franks, &c.

Inspectors of franks, clerks of the post office, and other persons of skill, practised in examining handwriting and in detecting forgeries, have been in some cases allowed to give their opinion from their general knowledge of handwriting whether a particular specimen of handwriting is in a genuine or imitated character. (*Goodtitle* d. *Revett* v. *Braham*, 4 *T. R.* 497; *R.* v. *Cator*, 4 *Esp.* 117, 145; *Kemp* v. *Mackrill*, *Sayer*, 132; *Stringer* v. *Searle*, 1 *Esp. N. P. C.* 14; 1 *Phill. Evid.* 493).

But such evidence has been since rejected, and great doubts entertained as to its admissibility. (*Gurney* v. *Langlands*, 5 *B. & Al.* 330). At all events it should, in general, have but little weight. (*Id.* and *see Doe* d. *Mudd* v. *Suckermore*, 5 *Ad. & Ell.* 703, *ante*, 416; where the judges differed in opinion on the admissibility of such evidence, and the remarks on that case in *Phil. Ev.* 2, 266.

Proof of execution when not necessary.

Ancient deeds, &c.

Proof of Execution when dispensed with.]—If a deed be thirty years old, it may be given in evidence without any proof of the execution of it. However, there ought to be some account given of the deed, as to where it was found, &c.: and if there be any blemish in the deed, by rasure or interlineation, the deed ought to be proved, though it were above thirty years old, by the witnesses, if living, and if they be dead, by proving the hand of the witnesses, or at least one of them, and the hand of the party, in order to encounter the presumption arising from the blemishes of the deed; and this ought more especially to be done if the deed imports a fraud. (*B. N. P.* 255). There is no fixed rule upon this point, but a deed has often been allowed as evidence where it was but twenty-five years old. (12 *Vin. Abr.* 57). Other old writings besides deeds are also subject to this rule of evidence. (*Fry* v. *Wood*, *Selw. N. P.* 517, n.) Thus a certificate of the ordination of a clergyman in Ireland, signed by the archbishop of Tuam, and found among the papers of the clergyman after his death. (*Rex* v. *Bathwick*, 2 *B. & Adol.* 639). It has been held sufficient to produce a certificate of settlement thirty years old, without showing that it had been kept in the parish chest. (*Rex* v. *Ryton*, 5 *T. R.* 259; and *see Rex* v. *Whitchurch*, 7 *B. & Cres.* 573; 1 *M. & R.* 472, S. C.) Even though the attesting witness be alive, and capable of being produced, it seems unnecessary to call him where the deed is thirty years old. (*Murch* v. *Collett*, 2 *Esp.* 665; *B. N. P.* 255). In a late case, a will of thirty years old was allowed to be read as proved, although the testator had died within thirty years, and some of the subscribing witnesses were proved to be still living. (*Doe* v. *Woolley*, 8 *B. & Cres.* 22).

3. *Private writings.*

Where a deed enrolled (and of which enrolment was necessary) is given in evidence, it is not necessary to prove the execution of it by the subscribing witness; but it may be proved by the enrolment indorsed on it; or if the deed be lost, by an examined copy of the enrolment. (*See ante*, 392).

Execution of.

Where one deed or instrument is recited in another, proof of the second deed or instrument is deemed proof of the one recited, as against the parties to the second deed or instrument and their privies. (2 *Bac. Ab. Evid.* F.) So would be the recital in a deed of the payment of money conclusive proof at law of such payment as against the parties to it or their privies. *Lampon* v. *Cork*, 5 *B. & Al.* 606; 1 *D. & R.* 210, S. C.; *Rowntree* v. *Jacob*, 2 *Taunt.* 141. But *see Deverell* v. *Whitmarsh*, *ante*, 372).

Where a party producing a deed under a notice to produce claims a beneficial interest under it, it will not be necessary for the party calling for the deed to prove the execution of it. (*Pearce* v. *Hooper*, 3 *Taunt.* 62; *Orr* v. *Morice*, 3 *B. & B.* 139; 6 *Moore*, 347, S. C.) Thus in an action against the vendor of an estate to recover the deposit on a contract for the purchase, if the defendant on notice produce the contract, the plaintiff need not prove its execution. (*Bradshaw* v. *Bennett*, 1 *M. & Rob.* 143; 5 *C. & P.* 48). And it makes no difference that the party calling for the deed impugns its validity on the ground of fraud. (*Carr* v. *Burdiss*, 1 *C. M. & R.* 782). But where the party producing the deed does not claim any interest under it, the party calling for it must prove it in the regular way. (*Id.*; *Gordon* v. *Secretan*, 8 *East*, 548; overruling *Rex* v. *Middlezoy*, 2 *T. R.* 41. *See Burnett* v. *Lynch*, 5 *B. & Cres.* 589; 8 *D. & R.* 368, S. C.; *Doe* v. *Heming*, 6 *B. & Cres.* 28; 9 *D. & R.* 15, S. C.; *Marin* v. *Palmer*, 6 *C. & P.* 466).

In *Vacher* v. *Cocks*, 1 *B. & Adol.* 145, it was decided that a party, producing at the trial of a cause a deed which had been some months in his possession, is not excused from proving the execution because he received such deed from the adverse party, who formerly claimed a benefit under it.

Proof of execution is not necessary when the opposite party who produces the deed is a public officer, who in the discharge of his official duties was obliged to prepare such a deed and get it executed. (*Scott* v. *Waithman*, 3 *Stark. N. P. C.* 168).

It is not necessary to prove the execution of an instrument against the spoliator of, or wrongdoer as to it. *Rex* v. *Ellins*, *R. & R. C. C.* 188).

Entries in books, &c.

Entries in Books, &c.]—We have already seen how far entries by persons in private books and writings are admissible in evidence. (*Ante*, 378).

Stamps.

Stamps.]—It would exceed the limits and object of this work to enter into a full detail of the law relative to stamps: we shall notice only the leading principles relative to the admissibility of unstamped instruments, or other evidence in support of them. The amount of the stamp duties, and several legislative provisions respecting them, will be found *post*, title "*Stamps*," Vol. V. The rest of the law on this subject will be found in *Chitty on Stamps; Impey on Stamps; Phill. Evid.; Roscoe's Evid.* 95, *&c.; Stark. Evid.* title *Stamp; Coventry on Stamps.*

It may be laid down as a *general rule*, that whenever an instrument becomes in any way the direct subject of a prosecution, or it is sought to give to the instrument tendered in evidence the effect of a genuine one, it must have the proper stamp, because, by the stamp acts, without a stamp it cannot be read as a genuine instrument. Thus an agreement to assign an apprentice cannot, if unstamped, be received in evidence to prove a settlement, even after the expiration of the term of apprenticeship. *Rex* v. *Bedford*, 6 *T. R.* 452). Various other instances might also be cited.

If indeed a party can get through his case without giving the opposite

party any opportunity of showing that there was a written instrument, if the latter wishes to avail himself of it, then *he* must produce it duly stamped (*Rex* v. *Padstow*, 4 *B. & Adol.* 208; *Rex* v. *Rawden*, 8 *B. & C.* 710; *Reed* v. *Deere*, 7 *B. & Cres.* 266; *Chit. Stamp Laws*, 43; *ante*, 365.

3. *Private writings.*

Stamps.

When a party is desirous of giving secondary evidence of an instrument which requires a stamp, which has been lost or destroyed, or in the custody of the opposite party, who has had notice to produce it, there must be positive or presumptive evidence that it was properly stamped. (1 *Stark. Evid.* 354, 3 *id.* 1379; *Chit. Stamp Laws*, 35). Where a party refuses to produce an instrument after notice to do so, it will be presumed as against him that it was properly stamped, until the contrary appear. (*Crisp* v. *Anderson*, 1 *Stark. C. N. P.* 35; 2 *Stark. Evid.* 80; *and see Munn* v. *Godbold*, 3 *Bing.* 292; *ante*, 365). Where an apprentice had regularly served under an indenture executed thirty years ago, and the parish in which the apprentice was settled under that indenture had relieved him for the last twelve years, it was held that the sessions had rightly presumed, that the indenture was duly stamped, although it was proved on the other side by the deputy registrar and comptroller of the apprentice indentures, that it did not appear that any such indenture had been stamped or enrolled. (*Rex* v. *Long Buckby*, 7 *East*, 45; 3 *Stark. Evid.* 1379). For the presumption of law is *omnia rite esse acta;* and against the negative evidence the parties below might reasonably set the possibility of an irregular entry in the return made to the office. (*Id.*)

Should, however, it appear by the examination or cross-examination of the party's witnesses, that the instrument was not properly stamped, then, although it has been lost, (*Rex* v. *Castle Morton*, 3 *B. & Al.* 588), or destroyed even fraudulently by the party who objects to the want of the stamp, no secondary evidence therefore can be admitted. (*Rippiner* v. *Wright*, 2 *B. & Al.* 478; 2 *Stark. Evid.* 80). For it is the duty of the parties to the instrument to take care that when it is executed it is properly stamped, and it is one of the risks attendant on an omission to do this, that if any accident happen to the instrument before the stamp is affixed, there is no remedy whatever on the instrument itself. (*Id.*)

For some collateral purposes, an unstamped instrument (though it requires a stamp) is admissible in evidence, as to defeat fraud, or prove an offence or crime. Thus, in support of an indictment for forgery, (*Rex* v. *Hawkswood*, 1 *Leach*, 257; *East's P. C.* 955, 6; *Rex* v. *Gibson*, 1 *Taunt.* 97; *Chit. Stamp Laws.* 53); or knowingly uttering a forged instrument, (*Rex* v. *Reculist*, 2 *Leach*, 703), it may be read in evidence, though unstamped. (*See Rex* v. *Fowle*, 4 *C. & P.* 592; *Rex* v. *Smith*, 5 *C. & P.* 201). And an unstamped check is admissible for the purpose of identifying other property stolen, in support of an indictment for larceny. (*Rex* v. *Pooley*, 3 *B. & P.* 316; *R. & R. C. C.* 31, *S. C.*)

In general, however, an unstamped instrument cannot be read in a criminal case, as evidence of the purpose for which it was intended. (3 *Stark. Evid.* 1382; *Rex* v. *Hall*, 3 *Stark.* 67, n.) Thus, in an indictment for setting fire to a house with intent to defraud an insurer, an unstamped policy is not admissible in evidence to prove the contract of insurance. (*Rex* v. *Gibson*, 1 *Taunt.* 95; *Rex* v. *Gibson*, *R. & R. C. C.* 138; 2 *Leach*, 1007). And upon an indictment against a clerk for embezzling his master's money, an unstamped receipt given by the servant to the debtor who paid him the money is not evidence against the prisoner. (*Rex* v. *Hall*, 3 *Stark.* 67). So, in a prosecution on the 7 Geo. III. c. 50, (which made it a capital offence for any person employed in receiving letters to secrete any letter containing a bank note, or any warrant or draft for the payment of money), it was held not competent to the prosecutor to give in evidence any instrument of that description unstamped. (*Rex* v. *Pooley*, 3 *B. & P.* 311; 2 *Leach*, 900, 904; *R. & R. C. C.* 31, *S. C.*)

4. *Modes of proof.*

Stamps.

But for a collateral purpose such a writing may be produced in evidence; and, therefore, if the prisoner be indicted for stealing a letter in which it was folded, it may be brought forward to fix him with having purloined the letter. (*Id.*) And where the act requiring the stamp does not expressly prohibit the unstamped paper from being given in evidence, it may for collateral purposes be read, as in the case of a newspaper, which, though unstamped, may be read in evidence in support of an indictment for a libel in another newspaper to prove the defendant's malice; and Lord *Kenyon* said this is not the case of deeds and agreements, when the acts of Parliament expressly declare, that no such instrument shall be read in evidence until stamped, and though the publisher would be liable to a penalty for not getting the paper stamped before publication, yet it may be given in evidence. (*R.* v. *Pearce*, *Peake's Ev* 75, 76; *Chit. Stamp Laws*, 53, 4, 5).

The rule upon this subject seems to be, that where the indictment is founded on a written instrument, and the instrument itself is the crime, it is receivable in evidence without a stamp; but where the indictment is for an offence distinct from the instrument, and the instrument only introduced collaterally, it cannot be received unless it be properly stamped. (*Rex* v. *Smyth*, 5 *C. & P.* 202. *See Chit. Stamp Laws*, 55).

In some cases, as in the instance of an unstamped receipt, although the unstamped instrument is not admissible in evidence, it may, nevertheless, be shown the witness to refresh his memory, and enable him, from his recovered recollection, with more certainty to give his parol evidence. (*See Maugham* v. *Hubbard*, 8 *B. & C.* 14; 2 *M. & R.* 5, *S. C.*; *Jacob* v. *Lindsay*, 1 *East*, 460; 3 *Stark.* 3; *Chit. Stamp Laws*, 46, 47).

When a party gives in evidence an instrument unstamped, but which in general requires a stamp, and relies on some facts entitling the instrument to an exemption from the stamp duty, he should prove those facts; and the mere recital in the instrument of such facts will not in general suffice. Therefore, where an unstamped indenture of apprenticeship recited that a premium of 12*l.* had been paid by the parish officers, but added, that it was paid out of a charitable donation fund belonging to the parish, and the master being called, proved that the premium had been paid by the parish officers, who told him, at the time of paying it, that it was charity money; it was held, that the fact of payment being proved, the recital in the indenture, and the declaration of the parish officers, were not admissible in evidence, so as to bring the case within the exemption in the Stamp Act, and that the indenture, being unstamped, was void. (*R.* v. *Skeffington*, 1 *B. & Al.* 382). But if there had been no evidence but the deed and the declaration of the parish officer, and the fact of payment by him had not been proved by the master, it seems there would have been sufficient evidence that the money was paid out of the charity fund. (*Id.*)

Except, however, in the case of exemptions, it is incumbent on the party who relies on the objection, to show that the facts bring the case within the operation of the law requiring a stamp. (*Waddington* v. *Francis*, 5 *Esp. R.* 182; *Lord Dudley* v. *Robins*, 3 *C. & P.* 26).

Where an instrument is not required by law to be stamped within a particular time after its execution, the court, upon its being offered in evidence, will not inquire when the stamp was affixed, nor, if a penalty was incurred, whether the proper penalty was paid on the stamping. (*Rex* v. *The Inhabitants of Preston*, 5 *B. & Adol* 1028; *and see Rex* v. *Inhabitants of Church Hulme*, *id.* 1029; *R.* v. *Chipping Norton*, 5 *B. & Al.* 412. *Vol. I.* tit. "*Apprentices*").

IV. Modes of Proof by Witnesses.

Division of subject.

This division of the subject will be considered with reference to, 1st, How many witnesses are requisite. 2d, Their competency. 3d, Their

credibility. 4th, How they may be compelled to attend. 5th, The examination of them on the trial. And lastly, Their expenses and privileges.

2. *Witnesses' competency.*

The law respecting the examination and compelling the attendance of witnesses before magistrates on summary proceedings will be found, *post*, under *tit.* "*Examination*," *post.*

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(1). Number of Witnesses required.

What number of witnesses are required.

The common law does not require any certain number of witnesses for the trial of any crime whatsoever except in perjury. (2 *Hawk.* c. 46, s. 2).

And before a justice of the peace, in divers cases, one witness is sufficient to convict an offender; the same being directed by special statutes.

But by stat. 7 Will. III. c. 3, s. 2, in case of *high treason*, whereby corruption of blood shall be made, no person shall be attainted but upon the oaths of two witnesses, either both to the same overt act, or one of them to one, and the other of them to another overt act of the same treason. But in *Gahagan's case*, at the *Old Bailey*, *Jan. sess.* 1748, (1 *Leach*, 42), it was determined, that a conviction of high treason may be upon the evidence of one witness, in all cases where there is no corruption of blood. In misprision of treason there must be two witnesses, unless the defendant willingly and without violence confess the offence. (1 Edw. VI. c. 12, s. 22. See further, 1 *Chit. C. L.* 560).

On an indictment for *perjury* there must be two witnesses; one alone is not sufficient, because there is in that case only one oath against another. (*Reg.* v. *Muscott*, 10 *Mod.* 194; *Rex* v. *Broughton*, *Stra.* 1230). But if the assignment of perjury be directly proved by one witness, and strong circumstantial evidence be given by another, or be established by written documents, this would perhaps be sufficient, although it does appear as yet to have been so decided. However, in *R.* v. *Mayhew*, (6 *C.* & *P.* 315), an admission in writing by the defendant was, with the direct testimony of one witness, considered sufficient. Also, if the perjury consist in the defendant's having sworn contrary to what he had before sworn upon the same subject, this is not within the rule above mentioned; for the effect of the defendant's oath in the one case is neutralized by his oath in the other; and proof by one witness will therefore make the evidence against the defendant preponderate. (*Arch. Cr. Plead.* & *Evid.* 110; *Rex* v. *Harris*, 5 *B.* & *Al.* 929; n. *a*). And the defendant has been convicted on the mere proof of his having so sworn without the production of any witness to contradict either the one statement or the other; the jury being left to infer from the circumstances on which occasion the perjury was committed. (*Anon.* 5 *B.* & *Al.* 939, 940, n.; *R.* v. *Knill*, *id.* 929, n. See *post*, "*Perjury*," *Vol. V.*).

In those courts which proceed by the rules of the civil law, as the spiritual court and the courts of equity, two witnesses are generally required; and the reason why the civil law requires two witnesses is, because their trial is by witnesses, and not by a jury of twelve men. (1 *Inst.* 6 b.; *Plowd.* 12 a.)

By stat. 29 Ch. II. c. 3, s. 5, devises of land shall be attested by three witnesses at the least.

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(2). Competency of Witnesses.

Competency of witnesses.

The exceptions to a witness are of two kinds; 1st, to his *credit* on account of facts, which do not at all disable him from being sworn, but yet may blemish the credibility of his testimony; and in such case the witness is to be allowed, but the credit of his testimony is left to the jury; 2d, to his *competency* on account of facts, which exclude him from

2. *Witnesses' competency.*

giving his testimony; and of these exceptions the court is the judge. (2 *Hale*, 276, 277).

As to what will affect the *credit* of a witness, see *post*, 442.

How incompetency may arise.

The *Incompetency* of a Witness may arise either from Want of Discretion, Want of Religion, from Infamy, from Relationship, from Confidential Communications, from Interest, from being Parties to the Prosecution, &c.

When objection of incompetency to be made.

Objections to the competency of a witness should properly be taken at the time of his examination on the *voire dire*, and before he is sworn in chief, at least in those cases where his answers may have the effect of rendering him competent by removing the objections. (*Woollaston* v. *Hakewill*, 3 *Scott*, *N. R.* 593). But where the objection was taken after the witness had been sworn in chief, but before he was asked any questions, it was held not too late. (*Yardley* v. *Arnold*, *Ex. T. T.* 1842; 11 *L. J. Rep.* 413; *see post*, 450).

Want of discretion.

Infants.

Want of Discretion.]—Want of discretion is a good exception against a witness; on which account alone it seems that an infant may be excepted against. (2 *Hawk.* c. 46, s. 27). But if an infant be of the age of fourteen years, he is as to this purpose of the age of discretion to be sworn as a witness; and even if under that age, yet if it appears that he hath a competent discretion, he may be sworn. (2 *Hale*, 278). And in many cases an infant of tender years may be examined, where the exigence of the case requires it; which possibly, being fortified with concurrent evidences, may be of some weight; especially in cases of such crimes as are practised upon children. (2 *Hale*, 279, 284. In *Brazier's case*, 1 *East's P. C.* 443, 444; 1 *Leach*, 199). On an indictment for assaulting an infant of five years of age with intent to ravish her, it was agreed by all the judges, that children of any age may be examined on oath, if capable of distinguishing between good and evil; but that they cannot be examined in any case without oath. (*R.* v. *Travers*, 2 *Stra.* 700; *Omychund* v. *Barker*, 1 *Atk.* 29; 4 *Blac. Com.* 214). When the child has appeared not sufficiently to understand the nature and obligation of an oath, judges have often thought it necessary, for the purpose of justice, to put off the trial of the prisoner, directing that the child in the mean time shall be properly instructed. (*Vide* 2 *Bac. Ab. by Gwillim*, 577, *notis*). Where the child cannot be sworn, the account which it has given of the transaction to others is not admissible. (*R.* v. *Tucker*, 1 *Phill. Evid.* 19; *R.* v. *Pike*, 3 *C. & P. C. N. P.* 598; 1 *Chit. C. L.* 589, 590; and see *post*, "*Rape*," *Vol. V.*)

Lunatics, &c.

Lunatics and other persons who are subject to temporary fits of insanity, may be witnesses in their lucid intervals, if they have sufficiently recovered their understandings.

Deaf and dumb.

And a person deaf and dumb is not on that account incompetent, but if he has sufficient understanding, may give evidence by signs, with the assistance of an interpreter. (*Ruston's case*, 1 *Leach*, 408; 1 *Phill. Ev.* 18, 20; and see *post*, as to examining him).

Want of religion.

Want of Religion.]—A man who has no religion whatever, or no religion that can bind his conscience to speak the truth, is excluded from being a witness. (*B. N. P.* 292; *Omichund* v. *Barker*, *Willes*, 549; 1 *Atk.* 44, S. C.) It is not, indeed, essential that the witness should be a Christian, or believe in the Old Testament; it is sufficient if he believe in a God, in a future state of rewards and punishments, and in the moral obligation of the oath he is about to take. (*Id.*) Gentoos, (*Willes*, 549; *Atcheson* v. *Everitt*, *Cowp.* 390); Jews, (*Gomes Serra* v. *Munez*, 2 *Stra.* 821); Mahometans, Turks, and Moors, (*Fachina* v. *Sabine*, *Stra.* 1104; 1 *Atk.* 19, S. C.; 1 *Leach*, 64), may be witnesses. Atheists, and such like infidels, professing no religion that can bind their consciences to speak the truth, cannot. (*B. N. P.* 292; *Omichund* v. *Barker*, *Willes*, 549, 1 *Atk.* 29, S. C.) The affirmations of

Quakers and Moravians are now made sufficient instead of an oath. (9 Geo. IV. c. 32, s. 1, *post*). 2. *Witnesses' competency.*

As to the mode of administering the oath to persons not Christians, &c., see *post*, 452.

The circumstance that a principal witness, although an adult and of sufficient intellect, has no idea of a future state of rewards and punishments, is not a sufficient ground for discharging the jury, though this appears as soon as the jury is charged, and before any evidence is given. (*R.* v. *Wade, R. & M. C. C. R.* 86).

The proper mode of examining a witness, for the purpose of trying his competency in religious principle, is not to question him as to his particular opinions, (as to whether he believes in Jesus Christ), but whether he believes in God, the obligation of an oath, and a future state of rewards and punishments. (*Per Buller.*, J., *R.* v. *Taylor, Peake*, 11). The witness's answer in the affirmative of such question will make him competent in respect to his religion. (*Ib.*)

Infamy, &c.]—It seems agreed that an attainder, judgment, or conviction of treason, felony, piracy, premunire, perjury, or forgery, on stat. 5 Eliz., and also a judgment in attaint for giving a false verdict, or in conspiracy at the suit of the King, and also judgment for any heinous crime, to stand on the pillory, or to be whipped or branded, are good causes of exception against a witness, while they continue in force. (2 *Hawk.* c. 46, s. 19; *Bull, N. P.* 291). And in *Bushell* v. *Barret*, (*R. & M. C. N. P.* 434), it was considered, that a judgment for a conspiracy to bribe a person (summoned as a witness on an information against the revenue laws) not to appear before the justices of the peace renders the person convicted incompetent as a witness. Infamy, &c. (*a*)

But a party convicted of a crime not of a heinous nature, as for keeping a gaming-house, (*R.* v. *Grant, R. & M. C. N. P.* 270), for publishing a libel, or seditious works, or the like, (*Gilb. Evid.* 140; 3 *Lev.* 428), is not incompetent on that account. Nor will a conviction for conspiracy to raise the funds by false rumours, or to commit a fraud, render the party convicted incompetent. (*Crowther* v. *Hopwood*, 3 *Stark.* 21; *D. & R. N. P. C.* 55, S. C.; *Park* v. *Strockley*, 4 *D & R.* 144; *case of the Ville de Varsovie and others*, 2 *Dods. Rep.* 174).

In the case of *Pendock* v. *Mackindor*, (2 *Wils.* 18), the question was whether a person convicted and whipped for *petit larceny* should be allowed to be a witness. And the Court were clearly of opinion he should not, and laid it down as a rule, that *it is the crime that creates the infamy, and not the punishment for it.* But by stat. 31 Geo. III. c. 35, it was enacted that no person shall be an incompetent witness by reason of a conviction of petit larceny. That act is repealed by the 7 & 8 Geo. IV. c. 27; and see now the 7 & 8 Geo. IV. c. 29, s. 2, abolishing the distinction between grand and petit larceny. (See tit. "*Larceny*," *Vol. III.*)

It seems agreed, that it is no good exception against a witness that he is an alien. (2 *Haw.* 46, s. 28).

Outlawry in a civil action is not a good exception against a witness, but outlawry for treason or felony appearing on the record by the sheriff's return of the exigent is. (*Rex* v. *Celier*, Sir *T. Raym.* 396; 2 *Haw.* c. 46, s. 21).

Excommunication is now no longer a ground for rendering a witness incompetent. (See the 53 Geo. III. c. 127, ss. 2, 3).

A pardon of any of these offences has the effect of restoring competency, in as full a manner as if the witness had never been convicted. (2 *Hawk.* c. 46, s. 22; *Gilb. Evid.* 141, 2). And this even in the case of perjury at common law, (5 *Esp.* 94), but not in the cases of perjury on stat. 5 Eliz. c. 9, and conspiracy at the suit of the king; in which cases the incompetency forms a part of the judgment, and is not merely a consequence of it. (2 *Hawk.* c. 46, s. 22; *B. N. P.* 292; but see *Hargr. Jurid. Arg.* 221). How competency restored by pardon, &c.

(*a*) An act of Parliament is about being passed by which witnesses are not to be excluded from giving evidence, by incapacity from crime or interest. If passed, as it probably will before the publication of this work, it will be found in the Addenda, under tit. "*Evidence.*"

2. *Witnesses' competency.*

In general, also, where a capital convict is pardoned, on condition of suffering certain punishment, the endurance of the punishment fulfils the condition, and restores his competency. (2 *Hale*, 278).

Before the abolition of benefit of the clergy, the allowance of clergy in clergyable felonies, and the endurance of the mitigated punishment, restored the offender to competency. The statute 7 & 8 Geo. IV. c. 28, (tit. "*Clergy, Benefit of*," *Vol. I.*), abolishing the benefit of clergy, and affixing punishments directly to the offences, was probably intended to have the same effect; but, as doubts were entertained whether it had distinctly accomplished the object, the stat. 9 Geo. IV. c. 32, s. 3, enacts, that, where any offender has been or shall be convicted of any *felony* not punishable with death, and has endured the punishment to which he has been adjudged, the punishment so endured shall have the like effects and consequences as a pardon under the great seal as to the felony whereof he was so convicted (*a*). And by the same stat. 9 Geo. IV. c. 32, s. 4, a person convicted of a *misdemeanour*, (except *perjury*, or *subornation of perjury*), which renders him an incompetent witness, shall not, after suffering his punishment, be deemed to be, by reason of such misdemeanour, an incompetent witness in any court or proceeding, civil or criminal (*b*).

The incompetency of offenders now, therefore, in every kind of offence, except perjury, or subornation of perjury, is removed, when the punishment is suffered, or a pardon granted. And since the 7 & 8 Geo. IV. c. 28, s. 13, it is not necessary that the pardon in case of felony should be under the great seal; if it be under the king's sign manual, countersigned by one of his principal secretaries of state, it will suffice. The act does not apply to pardons for misdemeanours. (See tit. "*Pardon*," *Vol. V.*)

It was held in *Rex* v. *Badcock*, (*Russ. & R. C. C.* 248), that a person who had been convicted of grand larceny, sentenced to be transported for seven years and confined in the hulks, and discharged at the end of his term, is a competent witness, such confinement operating as a statute pardon, and his having escaped twice from such confinement, for a few hours each time, does not destroy the effect of it.

Mode of proof of conviction, &c.

The party who would take advantage of this objection to the witness's competency must have the record itself, or a copy of the record of conviction, ready to produce in court; for, until the judgment upon the verdict be regularly entered, the witness is not deprived of his legal privileges. (*B. N. P.* 292; 1 *Cowp.* 3.) The conviction without the judgment will not suffice, as judgment might have been arrested; (*Gilb. Evid.* 128, 9); and the record will not be complete without a caption. (*Cooke* v. *Maxwell*, 2 *Stark. N. P. C.* 183). If it be objected

(*a*) The words of the act are, sect. 3, "And whereas it is expedient to prevent all doubts respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged; be it therefore enacted, that, where any offender hath been or shall be convicted of any felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the punishment so endured hath and shall have the like effects and consequences as a pardon under the great seal as to the felony whereof the offender was so convicted: provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other felony."

(*b*) Sect. 4. "And whereas there are certain misdemeanours which render the parties convicted thereof incompetent witnesses, and it is expedient to restore the competency of such parties after they have undergone their punishment; be it therefore enacted, that, where any offender hath been or shall be convicted of any such misdemeanour, (except perjury, or subornation of perjury), and hath endured or shall endure the punishment to which such offender hath been, or shall be, adjudged for the same, such offender shall not, after the punishment so endured, be deemed to be, by reason of such misdemeanour, an incompetent witness in any court or proceeding, civil or criminal."

against receiving a person's testimony, that he has been convicted of felony, and his punishment is unexpired, such objection must be supported by the production of the record; and no admission by the party himself will be sufficient. In this case, Lord *Ellenborough*, C. J., said, "It cannot be seriously argued that a record can be proved by the admission of any witness: he may have mistaken what passed in court, and may have been ordered on his knees for a misdemeanor. This can only be known by the record, and there is no authority for admitting evidence of it." (*Rex* v. *Castell Carcinion*, 8 *East*, 77; *see ante*, 391; 1 *Phill. Evid.* 30, 7 ed.)

2. *Witnesses' competency.*

No admission that he has committed a crime of which he has not been convicted, even perjury, will prevent him from being a competent witness. (*Rex* v. *Teale*, 11 *East*, 309; *Rands* v. *Thomas*, 5 *M. & Sel.* 244).

(4). Relationship.—It is to be observed, that there be many circumstances that disable a juror, that are not sufficient exceptions against a witness. Thus the exception of kindred is a good cause of challenge against a juror, but not against a witness: therefore the father may be a competent witness for or against his son, or the son for or against his father. These and the like exceptions may be to the credit or credibility of the witness, but are not exceptions against his competency. (2 *Hale*, 276; *Rex* v. *Mayor and Burgesses of Oakhampton*, 1 *Wils.* 333; *Rex* v. *Inhabitants of Cliviger*, 2 *T. R.* 263; *Rex* v. *Inhabitants of Bramley*, 6 *T. R.* 330; *Gilb. Evid.* 135).

(4). From relationship.

Husband and wife cannot be admitted to be witnesses for each other, because their interests are absolutely the same; nor against each other, because contrary to the legal policy of marriage. (*Co. Lit.* 6 b.; *Barker* v. *Sir W. Dixie*, *Cases t. Hardw.* 264; *Rex* v. *Sergeant*, *R. & M. C. N. P.* 352). She cannot even be asked a question on a trial, to contradict what the husband has sworn; for it would subject him to a prosecution for perjury. (*Rex* v. *The Inhabitants of Cliviger*, 2 *T. R.* 268).

Husband and wife.

However, there are some exceptions to this rule. In the case of high treason, it has been said that a wife shall be admitted as a witness against her husband, because the tie of allegiance is more obligatory than any other. (*Vide* 1 *Hale*, 301; 2 *Hawk.* c. 46, s. 82; 1 *Phill. Evid.* 7 ed. 85; *Brownl.* 47; 1 *Chit. C. L.* 595).

By stat. 6 Geo. IV. c. 16, s. 37, (and previously by stat. 5 Geo. II. c. 30), the wife of a bankrupt may be examined by the commissioners touching his estate, but not his bankruptcy.

If a woman be taken away by force, and married, she may be a witness against her husband indicted on stat. 9 Geo. IV. c. 31, s. 19, against the stealing of women; for a contract obtained by force has no obligation in law. (*R.* v. *Reading*, *R. T. Hard.* 83; *B. N. P.* 286; *ante*, *Vol. I.* 7).

So, upon an indictment on the same act, section 22, for marrying a second wife, the first being alive, though the *first* cannot be a witness, yet the *second* may, after proof of the first marriage, the second marriage being void. (*Grigg's case*, *Sir T. Raym.* 1; 4 *St. Tri.* 754; *B. N. P.* 287; 2 *Hawk.* c. 46, s. 72; *R. & M. C. N. P.* 354; *post*, "*Polygamy*," *Vol. V.*)

In Lord *Audley's* case, his wife was allowed to be a witness to prove that he assisted to a rape upon her. (1 *St. Tri.* 393; *and see* 1 *Hale*, *P. C.* 301; 1 *Phil.* 84).

In *Azyre's* case, on an indictment against him for beating his wife, Lord *Raymond* suffered her to give evidence. 1 *Stra.* 633; *B. N. P.* 287, S. C.)

A wife is permitted to exhibit articles of the peace against her husband (*B. N. P.* 287); and the court will not receive affidavits on the part of the defendant, to contradict the truth of the articles exhibited against him, and prevent his giving surety. (*Lord Vane's case*, 13 *East*, 171 [*a*]; *R.* v. *Doherty*, ib.)

2. *Witnesses competency.*

So an affidavit of a married woman has been admitted to be read, on an application to the Court of King's Bench for an information against the husband, for an attempt to take her away by force, after articles of separation. (*Bull. N. P.* 286; *R.* v. *Mead*, 1 *Burr.* 543; *Lord Vane's case*, 13 *East*, 171, n.; 1 *Phill. Evid.* 7 ed. 85).

On the trial of a man for the murder of his wife, her dying declarations are evidence against him. (*Woodcock's case*, 2 *Leach, C. C.* 363; *John's Case*, 1 *East's P. C.* 357; 1 *Phill. Evid.* 85; *ante*, 360).

Husband and wife.

And in all cases of personal injuries committed by the husband or wife against each other, the injured party is an admissible witness against the other. (*R.* v. *Jagger*, 1 *East's P. C.* 455; *Reg.* v. *Pearce*, 9 *Car. & P.* 667).

When several defendants were indicted under the 9 Geo. IV. c. 31, for a conspiracy, and the indictment contained two counts framed respectively on the 19th and 20th sections of that act, *Hullock*, B., was of opinion that even supposing the young lady who had been carried off to be at the trial the wife of one of the defendants, she was yet a competent witness for the prosecution, although there was no evidence to support that part of the indictment which charged force; first, of necessity; and secondly, because the defendant should not be enabled by his own criminal act to exclude such evidence against himself. *R.* v. *Wakefield*, 2 *Russ.* 605).

R. v. *Wood*, M. Sitt. 26 Geo. III. On an indictment for forcibly breaking open the house of a third person, and assaulting the defendant's wife, Lord *Mansfield*, C. J., admitted the defendant's wife as a witness to prove the assault on her. *MS.*

On the trial of an appeal against an order of removal (and, upon the same principle, in any suit or proceeding between third persons), a husband or wife is a competent witness to prove a former marriage, even after proof of a second marriage, although perhaps the witness would not be *compellable* to answer such questions. And the reasoning upon which this rule is founded is equally strong to shew, that the one may be called as a witness to disprove what has been stated by the other; and that either the party who has called the one, or the opposite party, may call the other for the purpose of contradicting. Indeed, the reasoning is much stronger in this case than in the former, where the husband or wife is allowed to prove the first marriage; for although they may directly contradict each other as to a particular fact, it will not follow that either party has been guilty of perjury. And as the most serious inconveniences might result from a different rule, which would be a bar to the full and complete investigation of the subject, in cases too where the property, the character, or even the life of a party may be at stake, it appears to be reasonable, and necessary to the ends of justice, that such evidence should be admitted. (1 *Phill. Evid.* 7 ed. 80; *Rex* v. *All Saints, Worcester*, *id.* 79; *and see R.* v. *Cliviger*, 2 *T. R.* 263; *R.* v. *Bathwick*, 2 *B. & Adol.* 639).

Woman divorced.

If a woman be divorced *a vinculo matrimonii*, she cannot prove a contract, or any thing else which happened during the coverture. Any fact arising after the divorce, she may prove. (*Monroe* v. *Twisleton*, *Peake's Evid. App.* p. xxxix.)

Woman living with the party as wife.

In *Campbell* v. *Twemlow*, (1 *Price*, 81), it was made a question, but not decided, whether a woman who had passed as the wife of a man, but was not so, could be examined as a witness for him. Lord C. B. *Richards* cited a case, before Lord *Kenyon* on the *Chester* circuit in the year 1782, where, on a trial for forgery, the prisoner called a woman as his witness whom he had himself in court represented to be his wife, but afterwards, on hearing an objection taken to her competency, denied that she was married to him; and Lord *Kenyon* would not permit him to call her, after having represented her as his wife. (1 *Phill. Evid.* 88, 7 ed.) However, it seems now fully settled by the case of *Batthews* v. *Galindo*, (1 *Mo. & Payne*, 565), that though a woman lives with a

man, uses his name, and passes as his wife, she is a competent witness for or against him, such circumstances going only to her credit, and not to her competency. *And see* 2 *Stark. Evid.* 711, and *Wells* v. *Fletcher*, 5 *C. & P.* 12; 1 *M. & Rob.* 99, S. C. *nom. Wells* v. *Fisher*).

2. *Witnesses' competency.*

The wife of a party is an incompetent witness for or against him, though she marry after the subpœna served. (*Pedley* v. *Wellesley*, 3 *C. & P.* 558).

Other points.

A widow cannot be asked to disclose conversations between her and her late husband. (*Doker* v. *Haslar*, *R. & M. C. N. P.* 198; but *see Beveridge* v. *Minter*, 1 *C. & P.* 364).

It seems a wife cannot be examined against her husband, even with his consent. (1 *Hale's P. C.* 47).

In all cases where husband and wife are admissible witnesses *against* each other, they are admissible also *for* each other. (*R.* v. *Sergeant*, *R. & M. C. N. P.* 352).

(5.) Confidential Communications.—Some persons also are privileged, by reason of their peculiar employment, from being compelled to give evidence.

(5). From confidence.

Attorneys.

Thus an attorney or solicitor ought not to be examined against his client, because he is obliged to keep his secrets; but of his own knowledge before retainer, that is, before he was addressed in his professional character, he may be examined as a witness, if served with a subpœna. (*Wood's Inst.* b. 4, c. 4; *and Cutts* v. *Pickering*, *Vent.* 197; 1 *Chit. C. L.* 605).

The cases have been contradictory on the question whether this privilege of confidential communications to an attorney is to be confined to such as are made to him for the purpose of either commencing, prosecuting, or defending a suit. In *Broad* v. *Pitt*, (3 *C. & P.* 519), *Best*, J., said, "I think this confidence in the case of attorneys is a great anomaly in the law. A man is not acting as an attorney when he is consulted about a deed; and I cannot distinguish his situation from that of any other man. I can make a distinction where a person requires information for the purpose of defending himself, or of commencing an action." (And see this case in *R. & M. C. N. P.* 233; *Williams* v. *Mundie*, *R. & M. C. N. P.* 34; 1 *C. & P.* 97, S. C.; 2 *Swanst.* 199, n.; *Wadsworth* v. *Hamshaw*, *Manning's Index*, 374; *Cobden* v. *Kendrick*, 4 *T. R.* 432). It seems, however, now settled that this rule is too confined, and that the privilege is to be extended to all confidential communications to the attorney *in his professional character*, whether relating to a pending or contemplated suit or not. Thus in trover for a lease by the assignees of a bankrupt. Plea, that, before the bankruptcy, the bankrupt deposited the lease with the defendant as a collateral security for money which the bankrupt then owed him. At the trial, the plaintiffs attempted to show that the lease was deposited after the act of bankruptcy, and for that purpose called a witness, who had been the attorney for the bankrupt after the act of bankruptcy, and had been applied to by him to raise him money. It was then proposed to ask him whether the bankrupt had not the lease in his possession at that time: but this was held privileged from disclosure, as being a confidential communication made to him relative to his character as an attorney. (*Turquand* v. *Knight*, 2 *Mee. & W.* 98). So where A. applied to B., an attorney, to raise money upon certain property, and enabled him to obtain an abstract of the title and compare it with the original, but the money was never raised. In an action of ejectment, where B. was called upon to produce the abstract as secondary evidence of an original deed stated therein: A.'s communication was held confidential, and B.'s evidence was therefore not admissible. (*Doe* d. *Peter* v. *Watkins*; 4 *Scott*, 155; 3 *Bing. N. C.* 421. *See Greenough* v. *Gaskell*, 1 *Myl. & K.* 100; *Walker* v. *Wildman*, 6 *Madd.* 47; *Doe* d. *Shellard* v. *Harris*, 5 *C. & P.* 592; *Cromack* v. *Heathcote*, 2 *Brod. & B.* 4; 4 *Moore*, 357, S. C.; *R.* v. *Boddington*, 4 *D. & R. M. C.* 233). But this privilege only extends to prevent the disclosure of facts communicated confidentially to the witness in the cha-

2. *Witnesses' competency.*

Confidential communication.

racter *of attorney;* and therefore it was decided in *Spencely* q. t. v. *Schulenburgh* (7 *East*, 357), that an attorney may be examined as to the contents of a written notice which he had received in the course of the cause, calling upon him to produce papers in the hands of his clients: for "the privilege is restricted to communications, whether oral or written, from the client to his attorney, and cannot extend to adverse proceedings communicated to him as attorney in the cause from the opposite party, in the disclosure of which there could be no breach of confidence." (*Per Lord Ellenborough, C. J.*, S. C.: *and see M. & M. C. N. P.* 235; *Wilson* v. *Rastall*, 4 *T. R* 753; *B. N. P.* 284). So in an action for money had and received where the defendant pleaded a recovery by foreign attachment, at the suit of a creditor of the plaintiffs, and that the creditors had execution of the sum recovered according to the customs of London; and the plaintiff replied, that no execution was executed. It was held that the attorney of defendant, the garnishee in the foreign attachment, was not incompetent to prove the custom in such attachment. (*Magrath* v. *Hardy*, 4 *Bing. N. C.* 782.) And where an instrument is called for at a trial and not produced, the attorney of the party required to produce it may be asked whether he has it in his possession; the object of such question being merely to let in secondary evidence of the contents of the instrument. (*Coates* v. *Mudge*, 1 *Dowl. N. S.* 540). And an attorney for a party in a cause is not bound to state the contents of a deed of which he first obtained a knowledge, by having obtained and read it at the suggestion of his counsel, at the consultation in the cause (*Davies* v. *Waters*, 9 *M. & W.* 608). An attorney may be called to prove a deed executed by his client which he has attested. (*Doe* v. *Andrews*, *Cowp.* 846). So to prove matters communicated to him after the termination of a suit of which they were the subjects, without a view to the objects of the suit. (*Cobden* v. *Kendrick*, 4 *T. R.* 431; *see Greenough* v. *Gaskell*, 1 *Mylne & K.* 109). And a communication made by a client to his attorney, not for the purpose of asking legal advice, but to obtain information as to a matter of fact, is not privileged. (*Bramwell* v. *Lucas*, 2 *B. & Cres.* 745; 4 *D. & R.* 367, S. C.) So a witness may be called upon by the plaintiff to state a conversation in which the defendant proposed a compromise to the plantiff, although the witness attended on that occasion as attorney for the defendant. (*Griffith* v. *Davies*, 5 *B. & Adol.* 502. *See Hill* v. *Elliott*, 5 *C. & P.* 436). An attorney is bound to give evidence of a statement made by himself to the adverse party by the direction of his client. (*Ripon* v. *Davies*, 2 *Nev. & M.* 310). A person who is not an attorney may be compelled to disclose communications made to him under a mistaken idea that he was an attorney. *Fountain* v. *Young*, 6 *Esp.* 113).

Where two parties in dispute have one attorney, a communication by one to him in his common capacity, or in a matter wherein he acts necessarily for the other party, is not privileged, and may be used by the other. (*Baugh* v. *Cradocke*, 1 *M. & Rob.*; *Cleeve* v. *Powell*, 1 *M. & Rob.* 228; *Perry* v. *Smith*, 9 *M. & W.* 681).

This privilege is that of the client, and not of the attorney; and the court will not allow the attorney, though he be willing, to make the disclosure, unless the client consent to the disclosure. (*B. N. P.* 284; *Wilson* v. *Rastall*, 4 *T. R.* 759).

But it is not every communication made to an attorney in the way of business, that will be privileged. The relation of *attorney* and *client* must subsist between the parties. Thus what a mortgagor in treaty to raise money says to the attorney of the mortgagee, is not privileged. (*Marston* v. *Downes*, 6 *C. & P.* 381; 1 *Adol. & E.* 31, S. C. *See Hill* v. *Elliott*, 5 *C. & P.* 436).

If the attorney be called by the client, and examined as to a matter which has been the subject of confidential communication, he may be cross-examined as to such matter, though not as to others. (*Vaillant* v. *Dodemead*, 2 *Atk.* 524).

Confidential communications made to counsel, when acting as such, are also privileged like those made to attornies. (*Wilson* v. *Rastall*, 4 *T. R.* 753, and cases above cited). 2. *Witnesses' competency.*

It seems an arbitrator cannot be compelled to give evidence in an action on an award of what has been done before him. (*Ellis* v. *Saltau*, 4 *C. & P.* 327, n.) Counsel.

A party who is protected from producing a deed at *Nisi Prius* on the ground that he holds it as a trustee for one of the parties, is not compellable to disclose the contents of it. (*Davies* v. *Waters*, 9 *M. & W.* 608). Trustee.

A person who acts as interpreter; or as agent between the attorney and his client; (*Du Barre* v. *Levette*, *Peake*, 78; *Parkins* v. *Hawkshaw*, 2 *Stark.* 239); or the attorney's clerk; (*Taylor* v. *Forster*, 2 *C. & P.* 195; *Studdy* v. *Sanders*, 2 *D. & R.* 347); cannot be called to reveal a confidential communication. Nor can a barrister's clerk be called to prove his master's retainer. (*Foot* v. *Hayne*, *R & M. C. N. P.* 165). Interpreter. Agent o attorney. Clerks.

But this privilege does not extend to the case of an agent or steward. (*Ib.*; and *Vaillant* v. *Dodemead*, 2 *Atk.* 524). Agent.

Nor to the case of a conveyancer. (*Vaillant* v. *Dodemead*, 2 *Atk.* 525). Conveyancer.

Nor to the case of *medical persons*. (*Wilson* v. *Rastall*, 4 *T. R.* 760). There are, indeed, cases, said Mr. *J. Buller in Wilson* v. *Rastall* (4 *T. R.* 760), to which it is much to be lamented that the law of privilege is not extended; those in which medical persons are obliged to disclose the information they acquire by attending in their professional characters. This point was very much considered in the Duchess of *Kingston's case*, before the House of Lords, where Sir *C. Hawkins*, who had attended the duchess as a medical man, was compelled to disclose what had been committed to him in confidence. (20 *Howell's St. Tr.* 613; and see 1 *Phill. Ev.* 144, 7 ed.; *Rex* v. *Gibbons*, 1 *C. & P.* 97). Medical persons.

Nor to clergymen. (*Rex* v. *Gilham*, *Car. C. L.* 61; *Broad* v. *Pitt*, 3 *C. & P.* 519; 20 *How. St. Tr.* 612). *Per Best, J.*, *Broad* v. *Pitt*, 3 *C. & P.* 519:—"I for one will never compel a clergyman to disclose communications made to him by a prisoner; but if he chooses to disclose them, I shall receive them in evidence." Clergymen.

Where the disclosure of a particular fact, not bearing directly upon the matter in question, may be of detriment to the public service, the court will not compel a witness to disclose it. In *Hardy's case*, (24 *How. St. Tr.* 753), a witness who was employed to obtain information of the proceedings at a meeting of one of the corresponding societies was not allowed to disclose the name of his employer. (And see *Rex* v. *Watson*, 2 *Stark.* 136). Communications between the governor of a colony and his *attorney-general* are confidential, and cannot be disclosed. (*Wyatt* v. *Gore*, *Holt*, 299; *Cooke* v. *Maxwell*, 2 *Stark.* 184). So is a letter written by an agent of government to one of the secretaries of state. (*Anderson* v. *Hamilton*, 2 *Broad & B.* 156, n.) Matters of state, &c.

A letter written by an opposing creditor to the chief commissioner of the Insolvent Court, previous to the hearing of an insolvent's case, is not a privileged communication. (*Gould* v. *Hulme*, 3 *C. & P.* 625). Other matters.

A clerk attending on a grand jury shall not be allowed to reveal that which is given in evidence before the inquest. (*Tr. per Pais*, 387; 2 *Hawk.* c. 46, s. 83; and see *Lee* v. *Birrel*, 3 *Camp*, 337).

A grand juryman has been allowed to be examined in an action for maliciously indicting the plaintiff and others for a conspiracy, as to the fact whether the defendant was the prosecutor of the indictment. (*Sykes* v. *Dunbar*, 2 *Selw. N. P.* 1059).

A widow cannot be asked to disclose conversations between her and her late husband. (*Ante*, 425).

(6). Interested Witness.—It is an objection to the admissibility (6.) From interest (a).

(a) An act of Parliament will probably soon be passed, by which witnesses are not to be excluded from giving evidence by incapacity from crime or interest. If passed, it will be found in the Addenda, tit. "*Evidence.*"

2. *Witnesses' competency.*

of a witness that he is *interested;* respecting which it seems an uncontested rule in all cases, that it is a good exception against a witness, that he is either *to be a gainer or loser by the event of the cause,* whether such advantage be direct and immediate, or consequential only. (2 *Hawk.* c. 46, s. 24).

What such an interest.

And however small the interest may be, the witness would be incompetent. (*Burton* v. *Hinde,* 5 *T. R.* 174: but see *Rex* v. *Mayor of London,* 2 *Lev.* 231; *Peake's Evid.* 177).

The witness, however, must have an *immediate* interest in the event of the proceeding, or must derive a *certain* benefit from its determination one way or the other. (*Radburn* v. *Morris,* 1 *M. & P.* 648; 4 *Bing.* 649; S. C. See *Doe* d. *Nightingale* v. *Maisey,* 1 *B. & Adol.* 439). A liability to a remote action or prosecution would not suffice to make him competent. (*Ib.*) And if the witness would not incur any loss, nor be liable to a suit, whatever may be the result of the prosecution, his evidence ought to be received. Thus, on an indictment for forging a bank note in the name of a cashier of the Bank of England "for the governor and company," the cashier, not being chargeable, may be a witness. (*Newland's case,* 1 *Leach,* 311; 2 *East's P. C.* 1001; 1 *Phill. Evid.* 122. See *Collins* v. *Gwynne,* 2 *M. & Scott,* 640; 9 *Bing.* 544, S. C.)

And as to what interests will not render a witness incompetent, see *Hatcher* v. *Seaton,* 2 *M. & W.* 47; *Pulling* v. *Meredith,* 8 *Car. & P.* 763; *Shipton* v. *Thornton,* 9 *Ad. & E.* 314; 1 *Per. & D.* 216; *Doe* d. *Bath* v. *Clarke,* 3 *Bing. N. C.* 429; 4 *Scott,* 203; *Hartshorne* v. *Watson,* 5 *Bing. N. C.* 477; 7 *Scott,* 494; *Barker* v. *Stubbs,* 1 *Man. & G.* 44; 1 *Scott, N. R.* 131; *Fowler* v. *Round,* 5 *M. & W.* 478; *Wildgoose* v. *Pearce,* 5 *M. & W.* 506; *Reg.* v. *Yates,* 1 *Car. & M.* 132.

The judges have, in a variety of cases, resolved that these questions of interest shall, as far as possible, go to the *credit* rather than the *competency* of the witness. (*Peake's Evid.* 141).

Witness believing himself interested.

Honorary obligation.

A witness who believes himself interested, but is not so in fact, is competent. Thus a witness who believes himself under an obligation of honour to indemnify the bail, but who has entered into no engagement to indemnify, is competent. (*Pederson* v. *Stoffles,* 1 *Camp.* 145). There are, however, authorities that a witness who believes himself *legally* interested is incompetent. (See *Trelawny* v. *Thomas,* 1 *H. Bla.* 307; and *Fotheringham* v. *Greenwood,* 1 *Stra.* 129; and see 1 *Phill. Evid.* 54, n.; 2 *Stark. Evid.* 747, n.) In the case of the *Amitie Villeneuve,* (5 *Rob. Rep.* 344), Sir *William Scott* rejected the evidence of a witness who stated that he conceived he would be entitled to share in case his vessel should be deemed joint captor, although he had signed a release. Sir *William Scott* observed that "he had always understood the distinction to be, that, if the witness says only that *he expects* to share from the bounty of the captors, he is not disqualified or rendered incompetent, whatever may be the deduction of credit to which he is exposed. But if he *thinks himself entitled in law,* he acts under an impression of interest, which renders him incompetent, however erroneous that opinion may be."

Interest.

Witness's hope or expectation.

It is no objection to the competency of a witness that he has wishes or a strong bias on the subject-matter of the issue, or that he hopes or expects some benefit from the result of the trial. Such circumstances may influence his mind and affect his credibility; they are therefore always open to observation, and ought to be carefully weighed by the jury, who are to determine what dependence they can have on his testimony; but they will not render him incompetent. (1 *Phill.* 47, 7 ed.; *Gilb. Evid.* 124; *R.* v. *Rudd,* 1 *Leach,* 127).

Persons interested both ways.

As an exception to the general rule, that persons immediately interested in the event of the cause cannot be witnesses for that party whose claim, if established, will advance their own interest, there is a class of cases determining that where a person is equally interested,

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either in the event of a verdict for the plaintiff or defendant, he is a good witness. As, for example, where one is intrusted by A. to pay money to B., and does not pay it accordingly, and then B. brings an action against A. for the amount: the agent is a good witness to prove no payment; inasmuch as he acknowledges the receipt of the money from A., and thereby renders himself liable to A. So, if an indictment be preferred against a county for not repairing a bridge, and the only question be whether it is in repair, men of the county are good witnesses not only on the general principle, but because it is equally desirable to every man that the bridge, for convenience of passage, should be repaired when it is necessary, as that the county should not be put to an unnecessary charge: so that they are indifferent, being equally concerned on both sides of the question. (*The case of the City of London*, 1 *Ventr.* 351; *R.* v. *Inhabitants of Wiltshire*, 6 *Mod.* 307; *Peake's Evid.* 169. *See Collins* v. *Gwynne*, 9 *Bing.* 544).

Interest acquired subsequently.

Where a person has made himself a party in interest in the subject-matter for the mere purpose of depriving the party to the suit of the benefit of his testimony, this ought not to exclude him from giving evidence: (*see Barlow* v. *Vowel*, *Skin.* 586; *Bent* v. *Baker*, 3 *T. R.* 27; 1 *Phil.* 137); and in the late case of *Hovill* v. *Stephenson*, (5 *Bing.* 493), where the plaintiff, in an action on a charty-party, had communicated to the attesting witness an interest in the adventure subsequently to the execution of the instrument, it was held that evidence of his hand-writing was inadmissible, and that he himself ought to be called.

Trustee.

If a *trustee* takes a beneficial interest, he is incompetent; but without such an interest trustees and executors are competent witnesses. (1 *Phill. Evid.* 52, 69, and authorities there cited). Trustees being empowered, by act of Parliament, to sue in the name of their treasurer, are not competent witnesses for the treasurer suing as such. (*Whitmore* v. *Wilks*, 1 *M. & M.* 214).

Executors.

And by the 1st Vict. c. 26, s. 17, it is enacted that no person shall on account of his being an executor of a will be incompetent to be admitted a witness, to prove the execution of the will, or to prove the validity or invalidity thereof.

Legatee.

The estate of a deceased is always liable for the reasonable expenses of his funeral, and can, in no event, be liable beyond them. Therefore, a residuary legatee is not incompetent to prove that his testator's funeral, which exceeded the cost chargeable upon the estate, was furnished to the order of a stranger, on the ground that the tendency of his evidence is to relieve the estate. (*Green* v. *Salmon*, 3 *Nev. & Per.* 388; 8 *Ad. & E.* 348).

By 1 Vict. c. 26, s. 15, it is enacted, that if any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, interest, gift or appointment, shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person, or wife or husband, be utterly null and void; and such person, so attesting, shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will.

Creditors.

By 1 Vict. c. 26, s. 61, it is enacted, that in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor, notwithstanding

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such charge, shall be admitted a witness to prove the execution of the will, or to prove the validity or invalidity thereof.

Mortgagee.

Ejectment by first mortgagee against mortgagor, defence that the mortgage was fraudulent; second mortgagee called as witness to prove the fraud, rejected as incompetent. (*Doe* d. *Cuthbert* v. *Bamford*, 3 *Per. & D.* 498).

Partner.

In an action on a charter party, a person who is a partner with the plaintiff in the ship, though not one of the registered owners, is not a competent witness for the plaintiff, unless cross-releases are executed between him and them. (*Jackson* v. *Gallaway*, 8 *Car. & P.* 480).

Heir at-law.

An *heir-at-law* may be a witness concerning the title to the land, but the remainder-man cannot; for he hath a present interest, but the heir-ship is a mere contingency. (*Smith* v. *Blackham*, 1 *Salk.* 283).

In ejectment, the lessor of the plaintiff claimed as heir of one T. B., the defendant as devisee of the person last seised: it was held, that the grandson of an elder brother of T. B, who himself claimed to be entitled to the property in question, was a competent witness for the defendant, he having no immediate interest in the event of the suit, and the verdict and judgment not being available as evidence for him in any suit that might be instituted by him against the defendant, for the recovery of the same property. (*Doe* d. *Bath* v. *Clarke*, 4 *Scott*, 203; 3 *Bing. N. C.* 429).

Steward of manor.

It is no objection to a *steward* of a manor, that he has a fee on admission: he is a witness notwithstanding. (*Champian* v. *Atkinson*, 3 *Keb.* 90).

Member of corporation.

In questions as to the rights or immunities of a *corporation*, the evidence of individuals who are not privately interested, though members of the city, may be received. But where corporators, as such, have private interest, as to be free of toll, rights of common, &c., these being really and substantially interested in the event of the cause, are no witnesses; (1 *Peake's Evid.* 145, 146, 156, and authorities there cited); and see the case of *Doe* ex dem. *Mayor, &c. of Stafford* v. *Tooth*, (3 *Younge & Jerv.* 19), where it was held that a member of a corporation is not a competent witness to sustain the claim of the corporation, even though he release his interest in the subject-matter of the suit. So, in an action of trespass, the defendant pleaded a right of common in respect of the occupation of a messuage, a freeman of the corporation was not a competent witness to prove that freemen only had a right of common in respect of the occupation of the messuage. (*Godmanchester Bailiffs* v. *Phillips*, 4 *Ad. & El.* 550). Nor was he made competent by a release by the freeman to the corporation of all his rights as freeman. (*Ib.*)

In an action of ejectment by an assignee of a mortgage, the assignment of the mortgage was put in, which recited an original mortgage of a corporation; and an objection having been made against the competency of a rate-payer, who was called as a witness by the lessor of the plaintiff, he was held competent; for, as the action was by a mortgagee against the tenant in possession, it was the rate-payer's interest rather that things should continue as they were, than that the tenant should be turned out. (*Doe* d. *Brame* v. *Maple*, 3 *Bing. N. C.* 832; 5 *Scott*, 35).

A member of a society is not a competent witness for another member. (*Planche* v. *Braham*, 8 *Car. & P.* 68). In the case of *Weller* v. *Governors, &c. of Foundling Hospital*, (cited in *Peake's Evid.*), it is to be observed the witnesses were admitted because they were mere trustees, and had not the least personal interest.

Party in a cause.

In *Norden* v. *Williamson* (1 *Taunt.* 378) it was decided, that if the defendant and plaintiff be willing, the defendant may have the plaintiff as a witness. And in *Worrall* v. *Jones*, (7 *Bing.* 395) it was held that where a defendant, who has suffered judgment by default, waives the objection and consents to be examined, and is called against his own interest, there is no ground for rejecting him.

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Commoner.

One *commoner* may be a witness for another *claiming common*, because in effect it charges himself; but if the prescription be, that all the inhabitants of such a place ought to have common there, one of the inhabitants could not, previous to 3 & 4 Will. IV. c. 42, be a witness to prove that another of the said inhabitants ought to have common there, because he would, in effect, swear to give himself right of common there. (*Hockley* v. *Lamb*, 1 *Lord Raym.* 731; *Anscomb* v. *Shore*, 1 *Taunt.* 261; 1 *Phill. Ev.* 57, 7 *ed.*) But the competency of such a witness seems to be restored in civil cases by that statute. (*Hoyle* v. *Coupe*, 9 *M. & W.* 882).

Judge or juror being a witness.

It seems agreed that it is no exception against a person's giving evidence either for or against a prisoner, that he is one of the judges or jurors who are to try him. (2 *Haw.* c. 46, s. 17). But where a juror is called upon to give his evidence, he ought to give it upon oath openly in court, and not be examined privately by his companions. (*Bac. Abr. Evid. A.* 2; 3 *Black. Com.* 357; *Kel.* 12).

Prosecutor in general.

Prosecutor.]—The testimony of the party injured is constantly admitted in evidence, because he cannot in any future suit derive any advantage from the record of a conviction. Thus, a prosecutor is competent upon an indictment for tearing a promissory note payable to him; (*R.* v. *Moise*, *Stra.* 595; *R.* v. *Parris*, 1 *Sid.* 431); or for extorting a bond from him; (7 *Mod.* 118); or for usury, although he was the borrower of the money, and has not repaid it, (*Id.*); or for cheating him by false pretences; (*Reg.* v. *Makartney*, *Salk.* 286); or for fraudulently procuring him to execute a cognovit. (*R.* v. *Parris*, 1 *Sid.* 431; *Ventr.* 4; *Stark. Evid. Part IV.* 772). But there may be cases in which the prosecutor is so directly interested in the event as to be incompetent as a witness, unless where a statute conferring the interest recognizes his competency either expressly or by implication. (*R.* v. *Williams*, 9 *B. & C.* 550).

In perjury.

It was formerly thought that, on an indictment for perjury, the party aggrieved by the deposition alleged to be false could not be sworn on the trial, even though the record of conviction could not be given in evidence in his favour on any future occasion. (*R.* v. *Nunez*, 2 *Stra.* 1043; *R.* v. *Ellis*, *id.* 1104; 2 *Hawk.* c. 46, s. 118). But it seems now to be fully settled that the party in question is competent, even without showing that he has satisfied the judgment obtained against him in the cause in which the perjury was committed, for the conviction of the defendant founded on his evidence is no ground of subsequent relief even in equity. (1 *Chit. C. L.* 597; *R.* v. *Broughton*, 2 *Stra.* 1230; *Abrahams* v. *Bunn*, 4 *Burr.* 2255; *R.* v. *Boston*, 4 *East*, 572; *Reg.* v. *Yates*, 5 *Jur.* 636, *N. P. C.*) It is laid down in *B. N. P.* 289, that on an indictment for perjury, on the statute of Elizabeth, the person injured cannot be a witness, because the statute gives him £10. But it is to be observed that the statute gives the £10, the moiety of the penalty, to the party grieved "*that will sue for the same*," bringing the case apparently within the principles to be collected from *R.* v. *Williams*, (9 *B. & C.* 558), that where a statute gives a reward or penalty not recoverable on the indictment, but only by a distinct suit in which the conviction will not be evidence, the testimony of the party entitled to the penalty will be admissible. (*See* "*Perjury*," *Vol. V.*)

In forgery.

Formerly, on a prosecution for forgery, the party by whom an instrument purported to be made was not admitted to prove it forged, if he would either be liable to be sued upon the instrument (supposing it genuine), or be thereby deprived of a legal claim against another. (*R.* v. *Russell*, 1 *Leach*, 8; *Watt's case*, *Hard.* 331; *Watt's case*, 3 *Salk.* 172; *Rhodes's case*, 2 *Stra.* 728; *Caffy's case*, 2 *East's P. C.* 995). But now, by stat. 9 Geo. IV. c. 32, s. 2, on any prosecution by indictment or information either at common law, or by virtue of any statute against any person for forging any deed, writing, instrument, or other matter

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In forgery.

whatever, or for uttering any deed, writing, instrument, or other matter whatsoever, knowing the same to be forged, or for being accessory before or after the fact to any such offence, if the same be a felony, or for aiding, abetting, or counselling the commission of any such offence, if the same be a misdemeanor, no person shall be deemed to be an incompetent witness in support of any such prosecution by reason of any interest which such person may have or be supposed to have in respect of such deed, writing, instrument, or other matter. And before this act, as we have already seen, (*ante*, 430), upon an indictment for forging a bank note, the cashier whose name was forged was holden to be a competent witness to prove the forgery. (*R.* v. *Newland*, 1 *Leach*, 350). So, on an indictment for forging the indorsement of the payee of a bill of exchange, the payee, who was to have paid the produce in discharge of a debt due from the drawer, but who in fact never received the bill, was holden to be a competent witness to prove the forgery. (*R.* v. *Sponsonby*, 1 *Leach*, 374; *and see Id.* 57). So, on an indictment against the payee of a bill for uttering a forged acceptance, the first indorsee was held a competent witness, though he has only advanced part of the amount of the bill, and though he releases, during the trial, the person in whose name the acceptance is forged. (*R.* v. *Mott*, *R. & R. C. C.* 435). So, on an indictment for forging a receipt, the person whose name was forged, having first recovered the money from the defendant, was holden to be a competent witness to prove the forgery. (*R.* v. *Wells*, *Bull. N. P.* 289). So, on an indictment for forging the name of a person to a power of attorney to sell out stock, where the forgery was detected before the stock was transferred, the person whose name was forged was holden to be a competent witness to prove the forgery. (*R.* v. *Wait*, 1 *Bing.* 121; *R. & R. C. C.* 505, S. C.) In *R.* v. *Fauntleroy*, a lady who had been a holder of stock in the public funds which had been sold out under a power of attorney in which her name was forged, became a competent witness to prove the forgery, on proof that the stock had been replaced in her name, and on production of a release for the dividends thereon (from the time it was sold out) executed by her to the Bank of England, who were the prosecutors, and her legal claim against whom would have been destroyed had the instrument proved genuine. The prisoner was convicted and executed. (*R.* v. *Fauntleroy*, 2 *Bing.* 413; 1 *C. & P.* 421, S. C.)

Interest.

Witness laying a wager.

Lord *Raymond*, in *Rex* v. *Fox*, (1 *Str.* 652), admitted the prosecutor to be a witness on an indictment for an assault, although he had laid a wager that he should convict the defendant; and the reason seems to be, not because the witness had made the wager at a time when public justice became interested in his testimony, but because it would be against public policy to allow a witness, by any such gratuitous act, to exclude himself from giving evidence. In addition to this it may be observed, that the wager would now probably be considered absolutely void, on a principle of public policy, as tending to produce an improper bias on the mind of the witness, and therefore as directly prejudicial to the administration of justice. (1 *Phill. Ev.* 139, 7 ed.; *and see Humphreys* v. *Miller*, 4 *C. & P.* 7).

Witness from necessity.

In many criminal cases, from the extreme necessity of the thing, interested persons are allowed as witnesses. As, where the owner prosecutes an indictment of felony for stolen goods, he is concerned in interest, for he will be entitled to restitution, and yet his evidence is admitted; so, on removing an indictment by *certiorari* from the sessions to the K. B., though the prosecutor in that case, if the defendant be convicted, is entitled to his costs, yet he is allowed as a witness. (*Q.* v. *Muscot*, 10 *Mod.* 193; *see Stark. Evid. Part IV.* 753). It is the constant practice, on an indictment for robbery, to admit the evidence of the person who has been robbed. (1 *Phill. Evid.* 140). And the same evidence is admitted in prosecutions for a cheat; (*Parris's case*, 1 *Ventr.*

42; 2 *Sid.* 431, *S. C.*); or for perjury. (*Rex* v. *Broughton*, 2 *Stra.* 1230). And in a civil case, in an action for toll claimed on a public road, persons who have refused to pay toll are of necessity competent to give evidence, notwithstanding their interest in the result of the cause. (*Lancum* v. *Lovell*, 9 *Bing.* 465; 2 *M. & Scott*, 843. *See Middleton* v. *Frost*, 4 *C. & P.* 16).

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But upon an indictment founded on the statutes of forcible entry, whereby justices are empowered to give restitution of the possession of the lands entered upon by force, or holden by force, to the respective tenants thereof, the tenant whose land has been entered upon or withholden by force is not a competent witness. (*Rex* v. *Williams*, 9 *B. & Cres.* 549; and *Rex* v. *Beavan, Ry. & M. C. N. P.* 242).

In forcible entry.

Persons who become interested *in the common course of business*, and who alone can possibly have knowledge of a fact, may be called as witnesses to prove it. Thus persons who have been agents employed to pay money may prove such payment. So an agent may prove the terms of a contract, though he be to derive a profit from it; and this upon the ground of necessity. If such evidence were not admitted, the facts would be incapable of proof. (*Bull. N. P.* 289; *Dixon* v. *Cooper*, 3 *Wils.* 40; *B. N. P.* 289; 1 *Phill.* 129; and see as to a surety of collector of rates, *Middleton* v. *Frost*, 4 *C. & P.* 16). But though agents and brokers are competent to prove a sale or contract, they are not competent to prove the contract properly executed in an action against the principal for their negligence. (*Gevers* v. *Mainwaring, Holt, C. N. P.* 139; *M'Braine* v. *Fortune*, 3 *Camp.* 317; *and see* 1 *Phill. Evid.* 130. 56, 7 ed.; *Edmonds* v. *Lowe*, 8 *B. & Cres*, 408).

Agents, &c.

In general, a person entitled to a reward upon the conviction of the defendant, is not thereby rendered incompetent to give evidence against him, (*Rex* v. *Muscot*, 10 Mod. 193), whether the reward be given by statute, by proclamation, or by a private person. (1 *Phill. Ev.* 119, 127; *and see Rex* v. *Williams*, 9 *B. & Cres.* 556).

Person entitled to reward.

Informer.]—By the common law, informers, who are entitled under penal statutes to part of a penalty, are not competent witnesses. (*Rex* v. *Tilly*, 1 *Str.* 115; 1 *Phill. Evid.* 125, 7 ed., and authorities there cited). But by the particular provisions or policy of several acts of Parliament, they may be admitted. Where a statute can receive no execution unless a party interested be a witness, there he must be allowed, says *Gilbert*, C. B.; for the statute must not be rendered ineffectual by the impossibility of proof. (1 *Phill. Evid.* 125). Thus, by stat. 2 Geo. II. c. 24, s. 8, against bribery at elections, the legislature, in giving an indemnity and discharge to any person offending against the act who shall discover any other offender so that he may be committed, must also have intended that he should be competent to give evidence at the trial; and therefore in an action for penalties he has been admitted. (*Bush* v. *Ralling, Say.* 289; *Mead* v. *Robinson, Willes*, 425; *Heward* v. *Shipley*, 4 *East*, 182; 1 *Phill. Evid.* 118). And where the reward or penalty is not recoverable on the indictment itself, but only by a distinct suit; then, as the conviction will not be evidence in such suit, the testimony of the party entitled to the penalty, &c. will on this ground also be admissible. Thus, on a prosecution for penalties under stat. 9 Anne, c. 14, s. 5, the loser of money at cards may prove his loss. (*Rex* v. *Luckup, Willes*, 425, n. *c*; 1 *Phill. Evid.* 126; *and see Rex* v. *Williams*, 9 *B. & Cres.* 557; and *post*, "*Gaming*," *Vol. III.*) There are also various other similar provisions, which will be found collected under different titles of offences in this work.

Informer.

In prosecutions for all offences punishable on summary conviction under the 7 & 8 Geo. IV. c. 39, s. 64, the evidence of the party aggrieved is admissible.

If it be a matter of discretion in the court whether it will inflict a

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penalty, the witness would not, it seems, be incompetent, though he should be entitled to a moiety of the penalty when inflicted. (*See Rex* v. *Cole*, 1 *Esp. Rep.* 217; *Peake Rep.* 217; *S. C.*; *sed vid. Rex* v. *Blackmore*, 1 *Esp. Rep.* 95).

Inhabitants.

Inhabitants.]—Inhabitants of a county, or other district, are competent witnesses to charge their own county or parish, but not *vice versâ*. (*Rex* v. *St. Lawrence*, 1 *Burr.* 588). Accordingly it has been held that a party who was liable to a county tax for the support of the suit was incomprehensible. (*Shropshire* v. *Staffordshire*, 1 *Sid.* 192). So, in settlement cases, a *rated* inhabitant formerly was incompetent to give evidence for his own parish as to the pauper's place of settlement. (*Rex* v. *Prosser*, 4 *T. R.* 19; *and see Rex* v. *South Lynn*, 5 *T. R.* 664; *Rex* v. *Kirdford*, 2 *East*, 561).

But by stat. 54 Geo. III. c. 170, s. 9, the competency of an inhabitant in these matters is established; and that act enacts "that no inhabitant or person rated or liable to be rated to any rates or cesses of any district, parish, township, or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall, before any court or person or persons whatsoever, be deemed and taken to be by reason thereof an incompetent witness *for or against* such district, parish, township, or hamlet, in any matter relating to such *rates or cesses;* or to the *boundary* between such district, parish, township, or hamlet, and any adjoining district, parish, township, or hamlet: or to any *order of removal* to or from such district, parish, township, or hamlet; or *the settlement* of any pauper in such district, parish, township, or hamlet; or touching any *bastards* chargeable or likely to become chargeable to such district, parish, township, or hamlet; or the recovery of any sum or sums for the charges or maintenance of such *bastards;* or the *election or appointment of any officer or officers*, or the allowance of the *accounts* of any officer or officers, of any such district, parish, township, or hamlet; any law, usage, statute, or custom to the contrary in anywise notwithstanding."

The cases which have arisen on the construction of this statute are numerous and conflicting. By the early authorities it was expounded liberally. Afterwards its effect was narrowed; and it will be seen that the late cases have returned to the old construction.

Thus, in an action of trespass against the overseers of a township, where the principal point was, whether the lands in question were vested in the overseers under a local act of Parliament, the Court of Exchequer determined that under this act a rated inhabitant of the township was a competent witness on the part of the defendants, although the land in question, if vested in the defendants, would be vested in trust for the township, and in aid of the poor-rates. (*Meredith* v. *Gilpin*, 6 *Price*, 146). And it was held, that on an indictment for the non-repair of a road or bridge, on a liability *ratione tenuræ*, parishioners were held, under its provisions, admissible witnesses for the prosecution. (*R.* v. *Hayman*, 1 *M. & M. C. N. P.* 401).

But in the case of *R.* v. *Wandsworth*, (1 *Bl. & Al.* 66), though the question of competency arose only incidentally, and the point was not discussed, the inhabitants of a parish indicted for not repairing were considered incompetent witnesses for the defence; and it was subsequently so decided in *R.* v. *Bishop Auckland.* (1 *Adol. & E.* 745).

In *Ozenden* v. *Palmer*, (2 *B. & Adol.* 236), (on the authority of which case that of *R.* v. *Bishop Auckland* was decided), a rate payer within a parish was held incompetent to prove the affirmative of an issue, whether there was a custom in that parish that persons whose duty it was to amend the highways in the parish should have the right of taking certain materials from a close of the plaintiff. In that case, much doubt was thrown on the law of *Meredith* v. *Gilpin*, and Lord *Tenterden*, in giving the judgment of the court, said, "On consideration,

we entertain great doubts whether that case was properly decided, and whether even there the matter could properly be said to concern the poor-rate, within the meaning of the act of Parliament. The great object of that act was the poor. Their maintenance and regulation was the matter principally in view of the legislature." And though the words of the ninth section are more comprehensive than those of the preamble, still it was held that at any rate the question in *Oxenden* v. *Palmer* did not *strictly and properly* relate to rates or cesses of the parish within the meaning of the act, and that unless it did so the witnesses were incompetent.

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These and the rest of the authorities upon the point underwent considerable discussion in the late cases of *Doe* d. *Baultbee* v. *Adderley*, and *Doe* d. *Batchelor* v. *Bowles*, (8 *Ad. & E.* 502). And Lord *Denman*, in delivering the judgment of the court in those cases, says, "We do not feel it necessary to enter upon the discussion of the numerous and conflicting cases which have arisen on the construction of the 54 Geo. 3, c. 170, s. 9. We content ourselves with saying, that the case of *Meredith* v. *Gilpin* appears to us to be well decided, and that, on consideration, we cannot agree with *Oxenden* v. *Palmer*, and the decisions to which it has given birth." So, under this statute, a person who occupied rateable property within a chapelry was held a competent witness to prove that a certain messuage was within the chapelry. (*Marsden* v. *Stanfield*, 7 *B. & C.* 815). So the statute was held to render inhabitants competent in an action by the surveyor of highways against his predecessor for penalties (*a*), per Lord *Tenterden*, in *Heudebourck* v. *Langton*, (*M. & M.* 402, n.). And on the authority of this case, *Tindal*, C. J., held, that rated parishioners were admissible to prove a liability *ratione tenuræ*. (*R.* v. *Hayman*, *Mo. & Mal.* 401).

On the other hand it was ruled, that, in an action against an overseer, for medical attendance on a pauper, a rated inhabitant, who had sanctioned the defence of the action, was not rendered competent for the overseer by the above statute. (*Tothill* v. *Hooper*, 1 *Moo. & Rob.* 392). So, an overseer was not competent to give evidence for his parish, on the trial of an appeal against an order of removal. (*Reg.* v. *Recorder of Bath*, 9 *Ad. & E* 714; 1 *Per. & D.* 469). So on an issue, to try the validity of a modus within a certain district, an occupier of lands within the district was incompetent to prove such modus. (*Stewart* v. *Barnes*, 1 *M. & Rob.* 472; *and see Oxenden* v. *Palmer* above cited, and *R.* v. *Auckland*, 1 *Ad. & E.* 744). But now, by the 3 & 4 Vict. c. 26, [3d July, 1840], intitled, "An Act to remove doubts as to the competency of persons, being rated inhabitants of any parish, to give evidence in certain cases;" and reciting that it is expedient to remove all doubt whether persons are by law competent to give evidence in cases where they have been formerly held to be disqualified by the liability to pay parochial rates, it is enacted, that from and after the passing of this act no person called as a witness on any trial in any court whatever may and shall be disabled or prevented from giving evidence by reason only of such person being, as the inhabitant of any parish or township, rated or assessed or liable to be rated or assessed to the relief of the poor, or for and towards the maintenance of church, chapel, or highways, or for any other purpose whatever.

Persons not disqualified from giving evidence on account of being assessed to parochial rates.

2. "That no churchwarden, overseer, or other officer in and for any parish, township, or union, or any person rated or assessed or liable to be rated or assessed as aforesaid, shall be disabled or prevented from giving evidence on any trial, appeal, or other proceeding by reason only

Nominal parties on any trial not disabled from giving evidence.

(*a*) It was held, however, in the same case, reported in 10 *B. & Cres.* 546, that the surveyor could not maintain his action against the late surveyor for the balance remaining in his hands until his accounts have been settled and allowed or disallowed in the manner pointed out by the 13 Geo. III. c. 78, s. 48; *see post*, "*Highways not Turnpike*," *Vol. III.*

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of his being a party to such trial, appeal, or other proceeding, or of his being liable to costs in respect thereof, when he shall be only a nominal party to such trial, appeal, or other proceeding, and shall be only liable to contribute to such costs in common with other the rate-payers of such parish, township, or union."

Under this last statute, *an owner of lands* within a parish is competent to give evidence on a prosecution against the parish for non-repair of a highway, though he be not a *rated inhabitant*, the lands being occupied by tenants who are rated for them. (*Reg.* v. *Inhabitants of Doddington*, 1 *Ad. & E., N. S.* 411).

Their declarations.

In *R.* v. *Hardwicke*, (11 *East*, 578), it was decided, in an appeal against the removal of a pauper, that the *declarations* of a rated inhabitant of either parish concerning the facts in issue are admissible in evidence—not only against himself, but also against the other rated inhabitants of his parish, on the ground that the rated inhabitants are the parties directly and immediately interested in the event of the proceeding, although the appeal is entered in the names of the parish officers. And it is not necessary to make such declarations evidence, that he should first be called as a witness and refuse to be examined. (*R.* v. *Whitley Lower*, 1 *M. & Sel.* 636). It is to be observed these decisions were before the passing of the 54 Geo. III. c. 170.

In the above case of *R.* v. *Hardwicke*, *Bayley*, J., said, "I do not think that in ordinary cases magistrates should give any weight to mere declarations of this kind; though there may be occasions when the declaration of such a party would have great weight, as if a person having gained a settlement by hiring and service were to become a lunatic, the master refuses to be examined, you may in that case give evidence of his declaration."

Non-repair of bridges.

By stat. 1 Anne, st. 1, c. 18, s. 13, the inhabitants of a *county* may be witnesses upon trial of indictments, for not repairing *bridges*, where the question is whether the county or a private person shall repair. Even before this act it was considered they were admissible. (*R.* v. *Carpenter*, 2 *Show.* 47; see also the case of *R.* v. *Hayman*, and *Heudebourck* v. *Langton*, *ante*, 436, 437; and title "*Bridges*," *Vol. I.*).

Actions against hundred.

In actions against the hundred for injuries occasioned by riots, &c. the inhabitants are made competent witnesses for plaintiff or defendant, by the 7 & 8 Geo. IV. c. 31, s. 5. (*Post*, "*Hundred*," *Vol. III.*; 4 *B. & C.* 913; 7 *D. & R.* 385, S. C.).

Actions against churchwardens.

3 Will. 3, c 11

In actions against churchwardens or overseers of a parish for the recovery of money mispent by them, inhabitants of the parish, who do not receive alms or any gift out of the parochial collection, are made competent witnesses by stat. 3 Will. III. c. 11, s. 12. (*See* "*Poor*," *Vol. IV.*)

5 & 6 Will. 4, c. 50 Highway and turnpike act.

By the highway act (5 & 6 Will. IV. c. 50, s. 100), in all cases, whether of a criminal or civil nature, inhabitants, and treasurer's clerks, surveyors, collectors, and other officers appointed by virtue of the act, are rendered competent witnesses in all matters relative to the execution of that act. (*See post*, "*Highways in General*," *Vol. III.*)

3 Geo. 4, c. 126.
4 Geo. 4, c. 95.

A similar provision to the last will also be found in the 137th sect. of the 3 Geo. IV. c. 126, relative to turnpike roads. And by sect. 59, collectors are made competent witnesses; and by stat. 4 Geo. IV. c. 95, s. 84, no person shall be deemed incompetent to give evidence by reason of being a trustee or commissioner, or a mortgagee or creditor of the tolls, or a farmer, lessee, or collector of such tolls, or a treasurer, or clerk, or surveyor, or other officer under such act. (*See post, title* "*Highways Turnpike*," *Vol. III.*)

27 Geo. 2, c. 29 Where penalty given to poor.

Formerly, where penalties were given to the use of the poor, for the benefit and exoneration of the parish or other place, the inhabitants were incompetent; but such incompetency is now removed where the penalty does not exceed 20*l.*, by stat. 27 Geo. III. c. 29, which enacts, that

where pecuniary penalties, or parts thereof, are given to the *poor*, the inhabitant of any place may be a competent witness to prove an offence, though the place may be benefited by the conviction of the offender, provided the penalty does not exceed 20*l.* (*See R.* v. *Davis*, 6 *T. R.* 177.)

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Though the penalty exceed 20*l.*, if the witness paid no rates he would be competent. (*R.* v. *Cottrell*, 2 *Chit. Rep.* 487).

Statute empowering trustees, &c. to sue, &c. in name of clerk, &c.

Where trustees for public purposes are empowered by statute to sue in the name of their treasurer, a trustee is not a competent witness for the plaintiff in an action so brought. (*Whitmore* v. *Wilks*, *M. & M.* 214).

Competency of parish officer when parish officers sued in name of their clerk.

Where by a local act the directors and overseers of the poor were enabled to sue and be sued in the name of their clerk, it was held in an action against the clerk, on a contract made by the directors, that a director was thereby rendered a competent witness for the defence, like any other inhabitant. (*Fletcher* v. *Greenwell*, 1 *C. M. & R.* 755).

In an action brought by the vestry clerk of the parish of Saint Pancras, under a local act, wherein the defendant pleaded that the plaintiff was not vestry clerk:—one of the directors of the vestry was held a competent witness for the plaintiff. (*M'Gahey* v. *Alsten*, 2 *Mee. & W.* 206).

Co-defendants.

Co-defendants.]—In general one of several defendants standing jointly indicted is not a competent witness for his fellows; and this even though he has suffered judgment by default before their trial. (*R.* v. *Lafone*, 5 *Esp.* 155; *sed vide* 2 *Hawk.* c. 46, s. 18). And in *Worrall* v. *Jones*, (7 *Bing.* 395), it was held that where a defendant, who has suffered judgment by default, waives the objection, and consents to be examined, and is called against his own interest, there is no ground for rejecting him. But where there is no case for the jury against one party, the court may in its discretion allow of his acquittal in any state of the trial before the reply, in order that he may be examined as a witness; (2 *Hawk.* c. 46, s. 98); but he is not entitled to demand an acquittal until all the other evidence for the defendants is concluded. (*Emmett* v. *Butler*, 7 *Taunt.* 607; *Wright* v. *Palin*, *R. & M. C. N. P.* 128; *Wynne* v. *Anderson*, 3 *C. & P.* 596). Persons implicated but not joined as defendants are good witnesses, though their credit may be questioned. (*See* 1 *Hale*, 305; *Talfourd's Dick. Sess.* 375, 376).

In an action *ex contractu*, a defendant who has suffered judgment by default is not a competent witness for the plaintiff against other defendants who plead to the action. (*Green* v. *Sutton*, 2 *M. & Rob.* 269. *See Brown* v. *Fox*, 1 *Phill. Evid.* 78; *Brown* v. *Brown*, 4 *Taunt.* 752; *Mant* v. *Mainwaring*, 8 *Taunt.* 139).

Accomplices (*a*).

Accomplices.]—It hath been long settled that it is no exception against a witness that he hath confessed himself guilty of the same crime; for if no accomplices were to be admitted as witnesses, it would be generally impossible to find evidence to convict the greatest offenders. (2 *Hawk.* c. 46, s. 94; 1 *Phill. Ev.* 36, 37, 7 ed.) And even where an accomplice has been joined in the indictment, and before the case comes on it appears his evidence will be required, he may, on the application of the counsel for the prosecution, be acquitted for the purpose of being called as a witness. (*R.* v. *Rowland*, 1 *R. & M. C. N. P.* 401).

But though accomplices are received as witnesses, their testimony ought to be received by a jury with a sober degree of jealousy and precaution; for on their own confession they stand contaminated with guilt, and, in the hope of lessening their own infamy, will be often tempted to

(*a*) *See* "*Approver*," *ante*, *Vol. I.*; 1 *Phill. Evid.* 36, 37. It is not a matter of course to admit an accomplice as evidence, but a motion is made to the court by the counsel for the prosecution, which the court may grant or refuse, as in their discretion will best answer the purposes of justice.

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Accomplices.

throw as much guilt as possible upon the accused. They may also, in some cases, be entitled to rewards on the prisoner's conviction, and in all cases expect to earn a pardon: and as fear is usually their motive in giving evidence, the same feeling may tempt them to exaggerate their statement, for the purpose of destroying their former associate, and securing themselves against his vengeance. (*See* 1 *Phill. Evid.* 37, 7 ed.)

And it is generally considered necessary, in order to induce the jury to credit an accomplice's testimony, to give other circumstances confirmatory of at least some of the leading circumstances of his story, from which the jury may be able to presume that he has told the truth as to the rest. (*See Rudd's case, Cowp.* 336; *Rex* v. *Birkett, Russ. & R. C. C.* 251).

However, if the testimony of an accomplice be confirmed so far as his testimony relates to one prisoner, but is not confirmed with respect to another prisoner, the latter may be convicted on the testimony of the accomplice, if the jury deem him worthy of credit. (*Rex* v. *Dawber and others*, 3 *Stark. R.* 34, and n)

Confirmatory evidence.

The practice, therefore, is to advise the jury to regard the evidence of an accomplice only so far as he may be confirmed, in some part of his narrative, by unimpeachable testimony. It is not necessary that he should be confirmed in every circumstance which he details in evidence: for there would be no occasion to use him at all as a witness, if his narrative could be completely proved by other evidence free from all suspicion. Nor need it appear, from the confirmatory evidence, that he speaks truth with respect to all the prisoners, or with respect to the share which each had in the transaction. But if the jury are satisfied that he speaks truth in some material parts of his testimony, in which they see unimpeachable evidence brought to confirm him, that is a ground for them to believe that he also speaks truly in other parts and with regard to the other prisoners, as to whom there may be no confirmation. (*By Thomson, B.* in *Rex* v. *Swallow and others*, Reports of the Trials at *York, Jan.* 1813, on special commission, p. 3, 17, 50, 150, 165, 201; 1 *Phill. Ev.* 41, 42). But "the corroboration of an accomplice ought to be to some fact or facts, the truth or falsehood of which goes to prove or disprove the offence charged against the prisoner." (*Per Patteson*, J., in *Rex* v. *Addis*, 6 *C. & P.* 388; *and see Rex* v. *Webb*, 6 *C. & P.* 595).

If the jury find the prisoner guilty on the single testimony even of a credible accomplice, the court will sometimes recommend him to mercy. (1 *Leach*, 466; 2 *Hawk.* c. 46, s. 96; *and see Rex* v. *Noakes*, 5 *C. & P.* 326).

Incompetency from interest how removed

Incompetency from Interest how removed.]—Persons interested may in this, as in other cases, be made witnesses by a release; as the supposed obligor in a bond may be a witness when released by the obligee, (*Dr. Dodd's case*, 1 *Leach*, 155); or the acceptor of a bill when released by the holder. (*Taylor's case*, 1 *Leach*, 214; *and see Rex* v. *Peacock, R. & R. C. C.* 278: *Rex* v. *Mott, id.* 435).

Where the objection to the competency of a witness (such as an accommodation drawer of a bill) appears on the record, his competency is restored by his statement that he has a release, without producing it. (*Lunniss* v. *Row*, 2 *Per. & D.* 538).

A butcher sued three of the directors of a zoological society for goods supplied for the animals. For the defence, a witness was called to prove that the plaintiff was a shareholder in the society. The witness was himself a shareholder, and had been released by one of the defendants:—Held, that the witness was not competent, without being released by all the three defendants; but that he would be so, if released by all three defendants, without being released by the other shareholders. (*Betts* v. *Jones*, 9 *Car. & P.* 199).

A certificated bankrupt being examined on the *voir dire*, stated that he had a large landed property, and that he expected a considerable surplus, but that he had not released it: he then executed a deed of assign-

ment of his surplus to one of his children, a daughter, and this was held to render him a competent witness, as it was a valid instrument, and transferred a legal right to the surplus, inasmuch as the Bankrupt Act did not provide for a reconveyance of land to the bankrupt. (*Turner* v. *Preston*, 4 *Jur.* 584, *N. P. C.*)

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But a member of a corporation is not a competent witness to sustain the claim of the corporation, even though he release his interest in the subject-matter of the suit. (*Doe ex* dem. *Mayor &c. of Stafford* v. *Tooth*, 3 *Launge & Jerv.* 19). And in an action of trespass *q. c. f.* where the defendant pleaded a right of common in respect of the occupation of a messuage, it was held, that a release by the freeman to the corporation of all his rights as freeman did not render him a competent witness. (*Godmanchester Bailiffs* v. *Phillips*, 4 *Ad. & E.* 550).

And a witness, who originally signed the deed of the Liverpool Building Society, and obtained a share, by which he has no interest in its funds, is not rendered competent by exchanging the share for a salary from the society, and cancelling it by the authority of the society, or by releasing his claim on it for salary. (*Bigby* v. *Walthen*, 5 *Dowl. P. C.* 527).

Where a defendant executed a release to a witness, but before it was given to the witness it was handed to the counsel on the opposite side for his inspection; he objected to the form of it, and it was altered, and the defendant re-executed it: it was held, that it was sufficient, and did not require a new stamp. (*Alten* v. *Farren*, 5 *C. & P.* 513). So also where the name of a second witness was inserted at the trial, and the release was re-executed before it had been given to either witness. (*Spicer* v. *Burgess*, 1 *C. M. & Ros.* 129; 4 *Tyr.* 598, S. C.)

Removal of interest.

It is said, that if the party who calls a witness tender a release to him, and he refuse to accept it, he may notwithstanding be afterwards examined on the trial. (*Goodtitle, Lessee of Fowler* v. *Welford*, 1 *Dougl.* 139; *Bent* v. *Baker*, 3 *T. R.* 27; *Peake's Evid.* 174).

3 & 4 Will. 4. c. 42.

By 3 & 4 Will. IV. c. 42, s. 26, "If any witness be objected to as incompetent on the ground that the verdict or judgment in the *action* in which it shall be proposed to examine him would be admissible in evidence for or against him, such witness shall nevertheless be examined; but in that case a verdict or judgment in that action in favour of the party on whose behalf he shall have been examined, shall not be admissible in evidence for him, or any one claiming under him, nor shall a verdict or judgment against the party on whose behalf he shall have been examined, be admissible in evidence against him, or any one claiming under him;" and by sect. 27, "The name of every witness objected to as incompetent, on the ground that such verdict or judgment would be admissible in evidence for or against him, shall, *at the trial*, be indorsed on the record or document on which the trial shall be had, together with the name of the party on whose behalf he was examined, by some officer of the court, at the request of either party, and shall be afterwards entered on the record of the judgment; and such indorsement or entry shall be sufficient evidence that such witness was examined in any subsequent proceeding in which the verdict or judgment shall be offered in evidence."

This act, it will be observed, extends only to *actions*, and not to issues, out of a court of equity. (*Stewart* v. *Barnes*, 1 *Mo. & R.* 472). Several cases ruled at Nisi Prius shortly after the passing of this act tended to restrict its operation, but it has since been construed with greater liberality. The object was to supersede the necessity and save the expense of a release in the cases to which it applies; and the effect of the 26th sect. is to make the witness competent, where the only interest is that the verdict may be used for or against the witness. (2 *M. & W.* 421). Thus, in an action for negligent driving by defendant's servant, the servant is rendered competent for the defendant by this act without a release; for his only interest is, that the verdict may be evidence of the

3. *Witnesses' credibility.*

damages in an action by his master against him. (*Yeomans* v. *Leigh*, 2 *M. & W.* 419). So, where a defendant in trespass justifies as servant of A. B., A. B. is competent for him under this act. (*Creevey* v. *Bowman*, 1 *Mo. & Rob.* 496). So, in an action against the specific legatee of a chattel, which the plaintiff asserted belonged to him, and had been left with the testator only on trial, the executor of the latter is rendered a competent witness for the plaintiff; for his only interest in the event is, that if plaintiff gets the value from the defendant he cannot afterwards sue the witness for it. (*Bowman* v. *Willis*, 3 *Bing. N. C.* 66; *and see Robinson* v. *Fereday*, 8 *Car. & P.* 752; *Pickles* v. *Hollings*, 1 *M. & Rob.* 468). In an action against one of several joint contractors, the other contractors are competent witnesses for the defendant under this statute. (*Russel* v. *Blake*, 2 *M. & G.* 374; *Poole* v. *Palmer*, 9 *M. & W.* 71); overruling in effect the cases of *Green* v. *Warburton*, 2 *M. & R.* 105, and *Stanley* v. *Jobson*, *Id.* 103). But the statute does not operate when the witness has a definite interest independent of the use that may be made of the verdict, and capable of being enforced without it. Thus, in an action by a corporation to establish an exclusive right of common, a corporator is not by this act rendered competent; for the plaintiff's disfranchisement alone can make him a witness. (*Godmanchester Bailiffs* v. *Phillips*, 4 *Ad. & E.* 550). So, on an issue to try the validity of a district modus, an occupier of land within it is not made competent to prove it. (*Stewart* v. *Barnes*, 1 *Mo. & R.* 472; *and see Steers* v. *Carwardine*, 8 *Car. & P.* 570; *Groom* v. *Bradley*, 8 *Car. & P.* 500; *Davies* v. *Morgan*, 1 *Beav.* 405; *Holden* v. *Hearn*, *Id.* 445).

The calling of a witness, whose name is on the back of the indictment for the other side, to cross-examine him, is by no means of course. It is discretionary even in felony, but it is a discretion always exercised; and it seems that the same discretion may well be exercised in misdemeanor. (*Reg.* v. *Vincent*, 9 *Car. & P.* 91).

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(3). Credibility of Witnesses.

(3). Credibility of witness.

Exceptions to the *credit* of a witness are such as do not at all disable him from being sworn, but merely affect the degree of belief which the jury will give to his evidence. (2 *Hale*, 276; *Windam* v. *Chetwynd*, 1 *Burr.* 414; 11 *East*, 209). In many cases a person may be credible where he is not competent, and competent where he is not credible. (*Windham* v. *Chetwynd*, 1 *Burr.* 417).

Who a credible witness.

Where, in acts of parliament directing convictions before justices, this word "credible" is introduced, it bears no precise or legal signification; but the magistrate is to judge, like the jury on a trial, how far the witness is sufficiently to be believed to warrant the conviction. (*Windham* v. *Chetwynd*, 1 *Burr.* 418; *Peake's Evid.* 124, *&c.*; 1 *Chit. C. L.* 589).

Who not so.

There may be a variety of circumstances which will shake the credit of a witness, arising from his interest, his integrity, good character, veracity, or knowledge of the facts he swears to. It would be of little or no utility to inquire minutely into these, and state who is or is not a credible witness, for that question must depend on the peculiar facts laid before the court and jury, and must be decided accordingly. We have, in the preceding inquiries, seen many instances where the credit of a witness may be shaken, notwithstanding his competency. (*See also Arch. Crim. Pl. & Evid.* 104).

Doubts as to credibility to be in favour of witness.

Where there is any doubt as to the competency or incompetency of a witness, the judges are more inclined to turn that doubt to a question of the witness's credibility. (*See ante*, 430).

Evidence not allowed to prove good character of witness when not attacked.

Where the character of a witness has not been attacked, no evidence can be admitted in support of it. (*Bishop of Durham* v. *Blackett*, 1 *Camp.* 207). But evidence of the conduct of deceased witnesses when it has been attacked may be received, to attach credit to their testimony,

or to destroy its effect. (*Wright ex* d. *Clymer* v. *Littler*, *infra*, cited by Ld. *Ellenborough*, C. J.; *Bishop of Durham* v. *Beaumont*, 1 *Camp.* 210; *Provis* v. *Reed*, 3 *M. & P.* 4). On an indictment for an assault with intent to commit a rape, where the prosecutrix was cross-examined as to crimes committed by her several years before the alleged offence, it was considered evidence might be adduced to show that her character had since been good. (*Rex* v. *Clarke*, 2 *Stark. N. P.* 241; *post*, "*Rape*," *Vol. V.*)

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It often happens that the character of the subscribing witnesses to deeds and other written instruments is the subject of inquiry; and upon this point the following cases have occurred. If the subscribing witnesses to a will be dead, evidence given of what was said by one of them, being then in bed of the illness of which he died, thereby impeaching the validity of the will, inasmuch as he declared it was a forgery, was admitted, and afterwards decided to have been rightly admitted; such evidence being given, not to prove the forgery, but to impeach the credit of the subscribing witness. (*Wright* d. *Clymer* v. *Littler*, 3 *Burr.* 1244). And evidence of the character of the subscribing witnesses may be admitted, if an imputation be cast upon the will. (*Doe* d. *Stephenson* v. *Walker*, 3 *Esp.* 284). And upon the authority of the preceding case, evidence was admitted that the subscribing witness to a bond had in his last moments begged pardon of Heaven for having been concerned in forging it. (*Per* Ld. *Ellenborough*, C. J., in *Aveson* v. *Lord Kinnaird*, 6 *East*, 195, *ante*, 381). These decisions were upon the principle that, if the subscribing witness could have been produced upon the trial, to prove his handwriting, as he might have been cross-examined, so a party may prove his declaration of the fact, in contradiction to the presumption of a due execution of the bond, from the proof of his handwriting as a subscribing witness. (*S. C.*)

Subscribing witness.

It has been agreed that the evidence given by a witness at one trial cannot, in the ordinary course of justice, be made use of against a defendant on the death of such witness at another trial. (2 *Hawk.* c. 46, s. 12. *See Melen* v. *Andrews*, 1 *M. & M. C. N. P.* 336).

Witness varying his evidence at different trials.

But it hath been admitted that, in order to show a variance in the evidence, a deposition taken by a witness before a justice of the peace may, at the prisoner's desire, be read at the trial, in order to take off the credit of the witness, by showing a variance between such depositions and the evidence given in court.

And for the same reason it seems agreed, that where a witness at one trial varies from his own evidence at another trial, in relation to the same matter, such variance may also be given in evidence to invalidate his testimony at the second trial (2 *Hawk.* c. 46, s. 9; *and see Rex* v. *Oldroyd*, *R. & R. C. C.* 88, where it was considered the prosecutor had a right to call for and adduce such evidence).

But nothing shall be admitted as evidence of what was done at another trial till the record of that trial be produced.

When a witness in support of a prosecution has been examined in chief, and has not been asked in cross-examination, as to any declarations made by him, or acts done by him, to procure persons corruptly to give evidence in support of the prosecution, it is not competent to the party accused to examine witnesses in his defence to prove such declarations or acts, without first calling back such witness examined in chief, to be examined or cross-examined as to the fact whether he ever made such declarations or did such acts. (*See The Queen's case*, 2 *Brod. & B.* 311).

Lord C. J. *Abbott*, in delivering the opinion of the judges in that case, said, "The usual practice is this: if it be intended to bring the credit of a witness into question, by proof of any thing that he may have said or declared touching the cause, the witness is first asked upon cross-examination whether or no he has said or declared that which is intended to be proved." (*The Queen's case*, 2 *Brod. & B.* 213).

Varying evidence at different trials.

Upon the question whether a witness being asked in cross-examina-

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tion, if in conversation with C. D. he had not informed him "that he was to be one of the witnesses against the defendant," and being re-examined he stated what induced him to mention to C. D. what he had so told him, and the counsel further proposed to ask as to the whole conversation between him and C. D. so far only as related to his being one of the witnesses, the judges (eight against one, *Best*, J., *diss.*) were of opinion that the witness having fully and unambiguously explained his motive for so stating, the re-examination could not proceed to the extent sought; and a distinction was made between a conversation with a witness and a party to the suit or prosecution, where the declarations of the latter would be evidence against him, and a conversation with a third party would not. In the latter case, as the conversation of the witness could only become evidence, as it might affect his character and credit with respect to antecedent declarations, or the motives under which he made them, when once every thing which constituted the motive and inducement, and which might show the party's meaning, has been laid before the court, all beyond is irrelevant and incompetent. (*The Queen's case*, 2 *Brod. & B.* 294, 298).

If a witness examined in chief on the part of the plaintiff, being asked whether he remembers a quarrel taking place between A. and B., answers that he has heard of a quarrel between them, but does not know the cause of it, and such witness is not asked, upon his cross-examination, whether he has or has not made a declaration stated in the question touching the cause of a quarrel, the counsel for the defendant cannot, in order to prove such witness's knowledge of the cause of the quarrel, afterwards examine a witness to prove that the other witness has made such a declaration to him touching the cause of such quarrel. (*The Queen's case*, 2 *Brod. & B.* 299).

In order to discredit a witness by proof of a contradictory statement, it is not enough to ask him *generally* whether he has ever made such a statement; but particulars must be specified to him. *Angus* v. *Smith*, 1 *M. & M. C. N. P.* 473; *et per Tindal*, C. J., S. C.):—"I understand the rule to be, that before you can contradict a witness, by showing he has at some other time said something inconsistent with his present evidence, you must ask him as to the time, place, and person involved in the supposed contradiction. It is not enough to ask him the general question, whether he has ever said so and so, because it may frequently happen that upon the general question he may not remember having so said, whereas when his attention is challenged to particular circumstances and occasions, he may recollect and explain what he has formerly said."

Where witness has before said or done something contrary to his evidence.

Where a witness swears to a particular fact, a letter written by him, contradicting in effect his testimony upon that fact, may be given in evidence to impeach his credit, the letter being first regularly proved. The witness stated that a certain school, of which he was usher, had been duly conducted as to morals: a letter was then offered in evidence on the other side, and received as such, formerly written by the witness, whilst usher, to a boy then at the school, containing much immoral matter. (*De Sailly* v. *Morgan*, 2 *Esp.* 692).

If a party wishes on the trial to impeach an adverse witness, by proof of his having used certain expressions, the witness must first be asked whether he used them. (*Carpenter* v. *Wall*, 3 *Per. & D.* 457; 11 *Ad. & E.* 803).

Where the witness's moral character is relevant to the issue, such expressions may be proved without the previous inquiry, if they tend merely to disgrace the witness, by showing that he has made unbecoming declarations; and even if they be of such a nature, the introductory question must not be dispensed with, if they tend likewise to contradict some part of the witness's evidence. (*Ib.*)

Party allowed to contradict his own

In *Alexander* v. *Gibson*, (2 *Camp.* 556), it was held, that where a witness is called and makes statements contrary to those which are expected

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witness, but not to discredit him generally.

from him, the party calling him may prove the facts in question by other witnesses; but Lord *Ellenborough* thought that the whole of the witness's testimony must, in that case, be rejected. It is, however, now decided that where a party being surprised by a statement of his own witness, calls other witnesses to contradict him as to a particular fact, the whole of the testimony of the contradicted witness is not therefore to be repudiated. (*Bradley* v. *Ricardo*, 8 *Bing.* 57). But the witnesses can be called to contradict him on the fact to which he has deposed only if it be material to the issue, not if it be merely collateral (*Friedlander* v. *London Assurance Company*, 4 *B. & Adol.* 193).

And a party will not be permitted, by evidence, to throw general discredit on his own witness; for this would enable him to destroy the testimony of the witness if he spoke against him, and to make him a good witness if he spoke for him. (*Bull. N. P.* 297; *Ewer* v. *Ambrose*, 3 *B. & C.* 749; *Bradley* v. *Ricardo*, 8 *Bing.* 57; *Friedlander* v. *London Assurance Company*, 4 *B. & Adol.* 193).

So where a witness gives on cross-examination unfavourable testimony to the party calling him, and on re-examination denies having given a different account of the matter so spoken to, the party calling him has no right to discredit him, by showing he had given such different account. *Holdsworth* v. *Dartmouth* (*Mayor*), 2 *M. & Rob.* 153; *Reg.* v. *Farr*, 8 *Car. & P.* 768).

But the counsel calling a witness who has given unfavourable evidence on cross-examination, may, on re-examination, ask him questions to show inducements to betray the party who has called him. (*Dunn* v. *Aslett*, 2 *M. & Rob.* 122).

And if a witness for the prosecution shows any unfair bias, the counsel who calls him may cross-examine him. (*Reg.* v. *Chapman*, 8 *Car. & P.* 558).

And if a witness for the prosecution disprove the prosecutor's case, he may call other witnesses to prove the facts denied by the former witness, and thus incidentally contradict that witness, and shew him to be unworthy of credit; but the prosecutor cannot adduce any evidence not otherwise admissible for the sole purpose of discrediting his own witness. (*Reg.* v. *Ball*, 8 *Car. & P.* 745).

The meaning of the rule is, that a party cannot prove his own witness to be of such a *general bad* character as would make him unworthy of credit. But if a witness suddenly, and without any previous intimation to the party calling him, give evidence against that party, another witness may be called to disprove the truth of that evidence. Therefore where the question was whether the defendant's servant who had been to sell a horse, had warranted him sound, he swore, on being called by the plaintiff, that he had not given any warranty; and Lord *Ellenborough* allowed the plaintiff to call another witness to prove, that at the time of the sale he had expressly warranted its soundness; There can be no rule of law, said Lord *Ellenborough*, by which the truth on such an occasion is to be shut out, and justice perverted. (*Alexander* v. *Gibson*, 2 *Camp.* 555; *Lowe* v. *Joliffe*, 1 *W. Black.* 365; *Ewer* v. *Ambrose*, 3 *B. & Cres.* 749; 1 *Phill. Evid.* 7 ed. 309).

In *R.* v. *Oldroyd* (*R. & R. C. C.* 88), where the name of the prisoner's mother was on the back of the indictment, and on her being called by the judge as a witness for the prosecution, she gave evidence in favour of the prisoner, and differing from her deposition before the coroner, the judge allowed the deposition to be read to show that her testimony was not to be relied upon: and it was held he might do so. And in a late case at Nisi Prius, it was held, that where a witness gives evidence destructive of the case he is called upon to prove, the party calling him may, in order to neutralize his evidence, show that he had before the trial given the attorney an account of the transaction entirely different from that sworn to by him at the trial. (*Per* Lord *Denman*, C. J., *diss.* *Bolland*, B., *Wright* v. *Beckett*, 1 *M. & R.* 414; *but see* 1 *Phill. Ev.* 294; 2 *Russ.* 636).

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Witness's credit to be only impeached by general accounts of his character.

A witness's credit may be impeached only by *general* accounts of his character, and not by proofs of particular facts. (2 *Hawk.* c. 46, s. 20; *B. N. P.* 296). Therefore if a witness, on being questioned whether he has not been guilty of a felony or of some infamous offence, deny the charge, the party against whom the witness has been called will not be allowed to prove the truth of the charge. (*Rookwood's case*, 4 *St. Tr.* 693; *and see Sharpe* v. *Scoging, Holt's N. P. C.* 541; *R.* v. *Watson*, 2 *Stark. N. P. C.* 149).

Supporting credit by proof of witness having sworn to same facts.

It has been doubted whether, to corroborate the testimony of the witness whose credit has been impeached, evidence is admissible to prove that the witness affirmed the same thing before, on other occasions. (*Gilb. Evid.* 150; *B. N. P.* 294). Mr. Phillips lays it down that it is not admissible. (1 *Phill. Evid.* 293; *citing De Sailly* v. *Morgan*, 2 *Esp. N. P. C.* 691; *Christian* v. *Coombe*, 2 *Esp. N. P. C* 489).

Mere opinion as to credit not allowed.

The mere opinion of a party, unsupported by reasons and facts, as to his not believing a witness on his oath, is entitled to no consideration: when otherwise, see *ante*, 382. But it is not essential that witnesses who state that they would not believe another person on his oath, should have overheard such person give evidence upon oath; as the real question is whether the witnesses have such a knowledge of the person's character and conduct as enables them conscientiously to say that it is impossible to place any reliance on any statement that such person may make. (*R.* v. *Bispham*, 4 *C. & P.* 292, *cor. Garrow*, B.)

Witness cannot be asked an irrelevant question.

A witness cannot be cross-examined as to a fact wholly irrelevant to the matter in issue, if answered affirmatively, for the purpose of discrediting his testimony if he answered in the negative, by calling other witnesses to disprove what he said. (*Spencely* v. *De Willott*, 7 *East*, 108; 1 *Phill. Evid.* 272).

If the witness answer such an irrelevent question before it is disallowed or withdrawn, his answer is conclusive, and evidence cannot be afterwards admitted to contradict him. (*Harris* v. *Tippet*, 2 *Camp.* 638).

It would be an irrelevant question to inquire of a witness, in cross-examination, whether he had not attempted to dissuade another witness examined on the opposite side from being present at the trial. (*Harris* v. *Tippet*, 2 *Camp.* 637). And the rule laid down in this case seems particularly illustrated by the following case, which occurred at *Monmouth Lent Ass.* 1811. One Yewin was indicted for stealing wheat. The principal evidence against him was a boy of the name of Thomas, his apprentice. *Lawrence*, J., allowed the prisoner's sounsel to ask Thomas, in cross-examination, whether he had not been charged with robbing his master, and whether he had not afterwards said he would be revenged of him, and would soon fix him in Monmouth gaol. He denied both. The prisoner's counsel then proposed to prove that he had been charged with robbing his master, and had spoken the words imputed to him. *Lawrence*, J., ruled, that his answer must be taken as to the former; but that as the *words* were material to the guilt or innocence of the prisoner, evidence might be adduced that they were spoken by the witness. (*Harris* v. *Tippet*, 2 *Camp.* 638).

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(4). How Witnesses compelled to attend.

(4). Compelling attendance of witnesses.

Having inquired as to the requisite number of witnesses, and as to who are competent and credible, so that the prosecutor and defendant may decide on what witnesses they should respectively call to attend the trial, we will now proceed to point out the mode of compelling such attendance.

Compulsory process.

The compulsory means to bring in witnesses are of two kinds. *First*, By process of *subpœna* issued in the king's name by the justices, or others, where the trial is to be, for disobedience to which the person served with the process is liable to an attachment. (*R.* v. *Ring*, 8 *T. R.*

585). *Secondly*, Which is the more ordinary and more effectual means (in criminal cases), the justices that take the examination of the person accused, and the information of the witnesses, may at that time, or at any time after and before the trial, bind over the witnesses to appear at the court where the trial is intended to be; and in case of their refusal to be bound over, may commit them for a contempt. (7 Geo. IV. c. 64, ss. 2, 3; 2 *Hale*, 282; *Bennet and Wife* v. *Watson*, 3 *M. & Sel.* 1; 1 *Phill. Ev.* 8; *et vide post*, title "*Examination*," 467). And in case of their neglect to attend, in pursuance of the recognizance, such recognizance will be forfeited, and may be put in force. But not without a written order of the judge of the court. (7 Geo. IV. c. 64, s. 31. *See* "*Recognizance*," *Vol. V.*).

4. *Witnesses, how compelled to attend.*

Writs of subpœna issued by the clerk of the peace, or the clerk of assize, at assize, are compulsory only within the county where they are granted; and therefore, if the witness lives beyond its limits, application must be made to the Crown Office, from whence it may issue to any part of England. (*Cro. C. C.* 9, 21).

By the 45 Geo. III. c. 92, s. 3, a writ of subpœna issued from any court of competent jurisdiction to compel the attendance of the witness will be equally valid if served in any *part* of the United Kingdom, and disobedience to it is punishable in the King's Bench. But this statute it seems does not alter the law relating to such subpœnas issued by the clerk of the peace, or the clerk of assize, the statute having been construed only to give to a subpœna having validity in England generally, equal validity in the other *parts* of the United Kingdom, viz. Ireland and Scotland, and *vice versâ*. (*See R.* v. *Brownell*, 1 *Ad. & Ell.* 598).

Before justices out of sessions.

In general, justices out of sessions have power to compel the attendance of material witnesses for the purpose of examining them, preparatory to committing for trial any person charged with an offence amounting to felony or misdemeanor, or suspicion thereof; for the 7 Geo. IV. c. 64, ss. 2 & 3, *post*, 468, which empowers them, in cases of felony or misdemeanor, or suspicion of felony or misdemeanor, to take the examinations on oath of those who know the facts, incidentally it seems gives them the power to enforce the attendance of such persons by summons and warrant. (*Bennett* v. *Watson*, 3 *M. & Sel.* 1; *Evans* v. *Rees*, 12 *Ad. & E.* 55). But it is questionable whether they have such power in an offence of less degree created by statute, unless it is specially given by statute, which is usually the case, by the statute creating the offence, and which frequently imposes a penalty on the witness's refusal to attend. It is said, however, by Mr. Starkie, (*Ev.* 1, 86), that where magistrates are authorized by a statute to hear and determine, or to examine witnesses, they have, incidentally, authority to summon witnesses, and to take the examination on oath. (*Lamb*, 517; *Dalton's* J., c. 6). And the 15 Geo. III. c. 39, which empowers justices, in all cases where any penalty is directed to be levied, or distress to be made by any act of Parliament, to administer an oath or oaths to *any* person or persons, for the purpose of levying such penalties, or making such distresses respectively, might therefore perhaps be held to confer, incidentally, the power of enforcing the attendance of material witnesses in such cases; for it is a rule, *quando lex aliquid alicui concedit, conceditur et id sine quo res ipsa esse non potest*. (*See Phill. Ev.* 2, 384).

At sessions.

The 38 Geo. III. c. 52, s. 4, provides that the courts of oyer and terminer, and general gaol delivery, may issue process to compel the attendance of witnesses on a trial of an indictment found in the grand jury of the county, for offences committed in the county of a city or town corporate.

Practice as to subpœna.

The subpœna when sued out is to be regularly served on the witness; and as only four witnesses can be included in one writ of subpœna, several writs are frequently necessary. In order to save expense, it is

4. Witnesses, how compelled to attend.

settled that service of a ticket containing the substance of the writ will be as effectual as service of the writ itself. (*Goodwin* v. *West*, *Cro. Car.* 522). In such case, however, the writ ought to be shown. The writ or ticket should be served personally on the witness; (*Smelt* v. *Witmill*, 2 *Stra.* 1054); and in a reasonable time before the day of trial, that he may suffer the less inconvenience from the attendance on the court. (*Hammond* v. *Stewart*, 1 *Stra.* 509; 1 *Phill. Evid.* 4. *See Tidd.* 9 ed. 806.)

The question as to whether a subpœna ad testificandum is served within a reasonable time, depends upon the circumstances of each particular case; therefore, where the defendant was served at twelve o'clock, while standing on the steps of the court-house, and was told the trial would come on the same day, which it did, at five o'clock, this service was sufficient. (*Maunsell* v. *Ainsworth*, 8 *Dowl. P. C.* 869).

A subpœna in court on the day of trial would do. Indeed, it has been considered that a person who is present in court, when called as a witness, is bound to be sworn, and to give his evidence in a criminal case, although he has not been subpœnaed. (*R.* v. *Sadler*, 4 *C. & P.* 218).

But service on a person living close to the place of service, at half-past eleven in the morning for a cause called on at two, was held not sufficient time. (*Barber* v. *Wood*, 2 *M. & Rob.* 172).

What is a reasonable time before the trial is matter for the court. (*Id.*).

Subpœna *duces tecum.*

If there be any papers in the witness's hands which it is desirable for the party to obtain, a special clause should be inserted in the writ called a *duces tecum*, by which he will be commanded to attend with the documents in question, and which he ought to obey, even where, from any confidential relation, the court will not, on his appearance, compel him to produce them. (*Amey* v. *Long*, 9 *East*, 485; 1 *Camp.* 14; 6 *Esp.* 116, S. C.; *Fountain* v. *Young*, 6 *Esp. Rep.* 115). What a witness is not bound to produce, see *Doe* d. *Carter* v. *Jones*, 2 *M. & Rob.* 47. The witness producing the papers under a subpœna *duces tecum* need not be sworn if the party by whom he is called does not wish to examine him. (*Perry* v. *Gibson*, 1 *Adol. & E.* 48; *Somers* v. *Mosely*, *id.*; *and see Davis* v. *Dull*, 1 *M. & M.* 514; *Simpson* v. *Smith*, 1 *Stark. Evid.* 161). And if sworn by mistake, this does not give the opposite party a right to cross-examine. (*Rush* v. *Smith*, 1 *Cr. M. & Ros.* 94). It is no excuse that the legal custody of the instrument belongs to another, if it be in the actual possession of the witness. (*Amey* v. *Long*, 1 *Camp.* 14, 180, n.; 6 *Esp.* 116, S. C.; *Corsen* v. *Dubois*, *Holt, C. N. P.* 239). If the witness, instead of bringing the papers &c. required, deliver them to the opposite party, by whom they are withheld, the court will allow secondary evidence of the contents of them to be given, without a notice to produce the originals. (*Leeds* v. *Cook*, 4 *Esp.* 256; *see R.* v. *Hunter*, 4 *C. & P.* 128).

How to obtain subpœna

The subpœna may be obtained from the Crown Office, or from the clerk of the peace, or clerk of assize of the court in which the defendant is to be tried. It is usual and best to obtain it from the Crown Office when the witness is unlikely to attend, as the remedy for disobedience to it (*viz.* by attachment) is less dilatory and expensive. (*See R.* v. *Brownell*, 1 *Ad. & Ell.* 598).

The name of the witness, though not in the original subpœna, may be inserted therein at any time, if he has been regularly served with a copy. (*Per Gibbs*, C. J., *Wakefield* v. *Gall*, *Holt, C. N. P.* 526).

Witness a prisoner.

Where a witness is a prisoner in execution for debt, he must be brought up by *habeas corpus ad testificandum* to give his evidence (1 *Phil. Evid.* 5); and so where he is confined on board a ship. (*R.* v. *Burbage*, 3 *Burr.* 1440; 2 *Hawk.* c. 46, s. 72). An affidavit of his being a material witness, and willing to attend, must be made to obtain this writ; as to the form of which, and making the application for it, see 1 *Chit. C. L.* 611; *Tidd's Pract.* 9th ed. 809; *post*, "*Habeas Corpus*," *Vol. II.*

4. Witnesses, how compelled to attend.

When a witness resides abroad, or is about to leave the country before trial, he may, by the *consent of both parties*, be examined on *interrogatories:* in the former case, before commissioners approved by both of them; and in the latter before a judge in chambers. (*See* 1 *Chit. C. L.* 612). In proceedings for offences alleged to have been committed in the East or West Indies by persons holding official situations there, witnesses may be examined before the magistrates there on writs of mandamus, 13 Geo. III. c. 63; 42 Geo. III. c. 85, ss. 2, 3. Where a party, in a case where consent is requisite, refuses to grant it, the court will put off the trial, to give time for the attendance of the witnesses. (*Mostyn* v. *Fabrigas*, 1 *Cowp.* 174; *Tidd*, 9th ed. 813).

Witness abroad.

In criminal proceedings, the only effectual punishment, and mode of securing the future attendance (if the trial has not been had) of the witness, is by attachment for the contempt of the court from which the process was originally awarded, or by indictment. (*R.* v. *Ring*, 8 *T. R.* 585; *Hammond* v. *Stewart*, 1 *Stra.* 510; 1 *Chit. C. L.* 614).

Punishment for non-attendance.

It is not settled whether magistrates, at sessions, &c. have authority to issue an attachment (*a*); and the usual way of punishment in such a case is by indictment or proceeding on the recognizance, if there was one.

Power of Justices to issue attachment.

When the subpœna has not been issued out of the Crown Office, the Court of Queen's Bench has no power to punish the witness for disobedience, either by attachment or otherwise, either by its general authority, or by virtue of the 45 Geo. III. c. 92, s. 3. (*R.* v. *Brownell*, 1 *Ad. & Ell.* 598).

Power of Queen's Bench.

It seems that the court will not grant an attachment if the witness was not regularly called, upon his subpœna, on the case being called on; (*R.* v. *Sketch*, 3 *Ad. & Ell.* 503; 3 *Dowl. P. C.* 368; 1 *Har. & W.* 123); but from what fell from the court in *Barrow* v. *Humphreys*, (3 *B. & Ald.* 598), that the witness would be guilty of a contempt, whether the case were called on or not, though the point was not decided.

Cause must be called on.

The application for the attachment must be made without delay, and in general in the term next after the disobedience of the subpœna. Where a witness was subpœnaed to give evidence on an indictment, tried December 11th, and made default, it was held that it was too late to move for an attachment in Easter term following. (*R.* v. *Sketch*, 3 *Ad. & Ell.* 503).

Time of application for attachment.

The court will not grant, it seems, an attachment unless the subpœna was personally served, and sufficient expenses tendered, if the witness were so poor he could not attend without them. (*See* 2 *Hawk.* c. 46, s. 173; see 45 Geo. III. c. 92, s. 4, *and see Newton* v. *Harland*, 1 *M. & G.* 956; 9 *Dowl.* 16). Nor will the court grant an attachment where the form of the writ is irregular. (*Vaughton* v. *Brine*, 9 *Dowl.* 179). It seems, however, that a witness who attends on a criminal prosecution is not entitled to have his expenses paid before giving his evidence. (*R.* v. *Cooke*, 1 *C. & P.* 321; *ante*, "*Costs.*" *See Tidd.* 9th ed. 806).

Service of subpœna.

Expenses of witness.

The witness, if taken upon an attachment for his contempt, may, if the trial of the defendant has not taken place, be detained till he has given evidence on the trial, and then he may be set at liberty. (Id. n. *a.*).

Detention of witness under the attachment.

An indictment would lie for conspiring to prevent the attendance of a witness. (*R.* v. *Steventon*, 2 *East*, 364).

Conspiring to prevent attendance of witness.

As to the consequences of not attending on civil proceedings, see *Tidd*, 9th ed. 807, 8; 5 Eliz. c. 9, s. 12.

By stat. 43 Geo. III. c. 140, after reciting that "writs of *habeas*

43 Geo. III. c. 140.

(*a*) From the case of *Rex* v. *Clement*, (4 *B. & Al.* 218), it would seem that the sessions may fine the party, though absent, for the contempt.

5. *Witnesses, examination of.*

Judges of superior courts may award a *habeas corpus* for bringing up prisoners for examination before courts-martial, &c.

corpus have been frequently awarded by the judges of H. M.'s courts of record at Westminster, for bringing persons detained in custody under civil or criminal process before magistrates or courts of record, as well for trial as for examination, touching matters depending before such magistrates or courts respectively; but doubts have arisen whether such judges have power to award writs of *habeas corpus* for bringing persons detained as aforesaid before courts-martial, commissioners of bankrupts, commissioners for auditing the public accounts, or other commissioners acting under commission or warrant from H. M.; and whereas it is expedient to make provision for bringing prisoners before such courts-martial or commissioners for the purposes hereinbefore mentioned," enacts, that any judge of the courts at Westminster may award a writ of *habeas corpus* to bring any prisoner, in any gaol in England, before a court-martial, commissioners of bankrupt, commissioners for auditing the public accounts, or other commissioners acting by virtue of any commission or warrant from H. M.; in like manner as they award such writs to bring persons detained in gaol before magistrates, or courts of record. The application for a *habeas* under this act should be made to a judge out of court. (*Gordon's case*, 2 *M. & Sel.* 582; *Tidd*, 9th ed. 809).

44 Geo. III. c. 102. Judges of the superior courts may award *habeas corpus* for bringing prisoners before courts of record to be examined as witnesses.

By stat. 44 Geo. III. c. 102, any judge of the courts of Q. B. or C. P. of England and Ireland respectively, or any baron of the Court of Exchequer of the degree of the coif in England, or any justice of O. and T. or gaol delivery, being such judge or baron as aforesaid, may, at his discretion, award a writ of *habeas corpus* for bringing any prisoner detained in any gaol or prison before any of the said courts, or any sitting of Nisi Prius, or before any other court of record, to be there examined as a witness, and to testify the truth before such courts, or any other grand, petit, or other jury, in any causes or matters, civil or criminal, whatsoever, which now are or hereafter shall be depending or to be inquired into or determined in any of the said courts. (*See Tidd*, 9th ed. 809, 810).

And see the 45 Geo. III. c. 92, ss. 3, 4, for compelling the attendance of witnesses to give evidence in criminal prosecutions in every part of the United Kingdom. (*See Rex* v. *Brownell*, 1 *Ad. & Ell.* 598).

In *Exp. Griffiths*, (5 *B. & Al.* 730), the court of K. B. granted a mandamus to the warden of the Fleet to take the body of a debtor confined there before a magistrate, to be examined from time to time respecting a charge of felony or misdemeanor.

(5.) The Examination of Witnesses.

Who to begin.

Who to begin.]—He who affirms the matter in issue, whether prosecutor or defendant, ought to begin to give evidence. (*Co. Lit.* 36).

Examination on the *voir dire*.

Examination on voir dire.]—Previous to admitting a witness to be sworn, it is often necessary to examine him upon what is termed the *voir dire* (*a*); which is done for the purpose of ascertaining whether there be any objection in law to his being admitted as a witness upon the case before the court; and it has been said that a party who is cognizant of the interest of the witness at the time when he is called, is bound to make his objection in the first instance. (*Turner* v. *Pearte*, 1 *T. R.* 720; 2 *Stark. Evid.* 757). See *ante*, 422.

And where a witness had been examined as to the merits of the case, and had left the box, and was then recalled and examined as to his interest in the event of the suit, when it appeared that he was interested;

(*a*) *Voir dire, veritatem dicere*, is when it is prayed upon a trial at law that a witness be sworn, that he shall true answer make to all such questions as the court shall demand of him. (3 *Black. Com.* 332.

an objection then taken to his competency was held to be too late. (*Fellingham* v. *Sparrow*, 9 *Dowl. P. C.* 141. *And see Hartshorne* v. *Watson*, 7 *Scott*, 494; 5 *Bing. N. C.* 479). And if the objection on the score of interest be not taken previous to the examination in chief, the witness cannot be cross-examined as to the contents of a written paper not produced, which might have been done had the objection been taken in the first instance. (*Howell* v. *Lock*, 2 *Camp.* 14).

5. *Witnesses, examination of.*

How conducted.

Where the witness himself is examined on the *voir dire*, he may be asked as to the contents of a written instrument, without a notice to produce, or without producing it, though, if the witness produces the instrument on which the objection is founded, it ought to be read. (*Butler* v. *Carver*, 2 *Stark. R.* 434). Accordingly, in the case of *Rex* v. *Gisburn*, (15 *East*, 57), on a question of settlement, when the point for the consideration of the Court of King's Bench was, whether a witness, who, after having admitted on his examination upon the *voir dire* that he was the occupier of a cottage in the appellant township of the annual value of 25*s.*, but that he had never been charged with or paid any public rate or tax in that township, could be examined without producing the rate to show that he was not rated; the court held that the witness was competent upon the *voir dire*, that what he answered must be taken for better for worse, and that if he should answer falsely he might be indicted for perjury.

So also it is a rule, that when the objection to the competency of a witness arises from his answer to a question on the *voir dire*, he may in the same way do away with the objection, and restore his competency by parol: but if the fact appears in any other way, as if the witness is proved by other evidence to have been a bankrupt, in such case it is necessary to answer the objection by the best evidence, that is, by production of the certificate itself. (By Ld. *Kenyon* in *Botham* v. *Swingler*, 1 *Esp.* 164: *The Butchers' Company* v. *Jones*, 1 *Esp.* 162, S. P.: *Goodhay* v. *Hendry M. & M.* 310).

A member of a corporation stated on the *voir dire* that he had been a freeman, but had resigned, and been disfranchised at a corporate meeting; the defendant was allowed on the *voir dire* to cross-examine him as to the number of persons present at the meeting, in order to ascertain whether it had been a regular meeting. (*Godmanchester* (*Bailiffs*) v. *Phillips*, 4 *Ad. & El.* 550). In the same case the witness, on being asked, on the *voir dire*, how many assistants (who formed a constituent part of the meeting) were present, and having answered, that a book then in Court would show, reference was permitted to be made to the book to ascertain what number was present. (*Ib.*)

Examination on oath.

Examination on Oath.]—In general no one can be examined as a witness in any criminal proceeding except upon *oath*; (1 *Leach*, 110; *Rex* v. *Taylor*, *Peake*, 11 *a*; 7 *Chit. C. L.* 615); and a peer is within this rule. (3 *Keb.* 61; *Rex* v. *Lord Preston*, 1 *Salk.* 278; *post*, "*Peers*," *Vol. V.*) A witness brought into court merely for the purpose of producing a document need not be sworn. (*Perry* v. *Gibson*, 1 *Ad. & Ell.* 48; *Somers* v. *Moseley*, *Ib.* n.; 1 *Phill. Evid.* 216; *Roscoe*, 75; *Rex* v. *Brooke*, 2 *Stark.* 472; *Davis* v. *Dale*, 4 *C. & P.* 335; 1 *M. & M.* 514, S. C.

But when the grand jury have found a bill, the judge before whom the case comes to be tried ought not to inquire whether the witnesses were properly sworn previously to their going before the grand jury, and it seems that an improper mode of swearing them will not vitiate the indictment, as the grand jury are at liberty to find a bill upon their own knowledge merely. (*Reg.* v. *Russell*, 1 *Car. & M.* 247).

Form of oath.

The oath usually administered to a witness is called a corporal oath. (3 *Inst.* 165; *post*, "*Oaths*," *Vol. V.*) The form used at the assizes or sessions is for the clerk of arraigns or of the peace to desire the witness to take the book in his hand, and when that is done, to say to him, "The evidence you shall give between our sovereign Lady the Queen and

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the prisoner at the bar shall be the truth, the whole truth, and nothing but the truth; so help you God:" upon which the witness kisses the book, and thereby appeals to Heaven for the truth of what he is about to disclose. (2 *Hale*, 279; 1 *Chit, C. L.* 616). *See post*, tit. "*Examinations*," *Forms, No. I.*)

But it is not absolutely necessary to use this form if the witness has a conscientious objection to the mode, or professes a religion which binds him by a different obligation. Thus Jews are sworn on the writings of Moses. (*Robeley* v. *Langston*, 2 *Keb.* 314; *Gomez Serra* v. *Munez*, 2 *Stra.* 821). Mahometans are sworn on the Koran; and persons of other religions according to the form prescribed for that purpose by the religion they profess. (*B. N. P.* 292). Christians are sworn with their hats off—Jews with their hats on. At the *O. B. Dec. Sess.* 1804, Erpune, a native of China, being examined as a witness before *Graham*, B., on an indictment against Ann Alsley and Thomas Gunn for felony, was sworn according to the form of courts of China, viz. by holding a saucer in his hand, which he dashed to pieces at the conclusion of the oath, believing, as he stated, that God would cause his body to be cracked, as he cracked that saucer, if he did not tell the truth. (*Sess. Pap.* 1804 and 1805, p. 62; *Peake, Evid.* 138, n., 5th ed.; *Reg.* v. *Entrehonan and Samut*, 1 *Car. & P.* 248). In like manner a Scotch covenanter has been permitted to swear by holding up his hand. (*Mildrone's case*, 1 *Leach*, 412). For oaths are to be administered to all persons according to their own opinions, and as it most affects their consciences.

A witness may be asked, after he is sworn, whether he considers the oath he has taken obligatory upon his conscience; but if he answer in the affirmative, his answer is conclusive, and he cannot further be asked whether there be any other mode of swearing more binding upon his conscience than that which has been used. (*The Queen's case*, 2 *Brod. & Bing.* 284). The more correct and proper way, however, is, to ask the witness before he is sworn, whether he considers the oath he is about to take obligatory upon his conscience. (*The Queen's case*, 2 *Brod. & Bing.* 284). It is no objection after trial that a Jew was sworn upon the gospel. (*Sells* v. *Hoare*, 3 *Brod. & B.* 232; 7 *Moore*, 36, S. C.) And as to what questions may be put to a witness respecting his religious principles, *see ante*, 423.

Affirmation of Quakers, Moravians, &c

Formerly a Quaker was not allowed to give in his evidence on his affirmation, nor was a Moravian on his declaration; but now, by the stat. 9 Geo. IV. c. 32, s. 1, a Quaker or Moravian required to give evidence in a criminal case may, instead of taking an oath in the usual form, be permitted to take a solemn affirmation or declaration in these words: "I, A. B., do solemnly, sincerely, and truly declare and affirm," which has the same force and effect in all courts of justice and other places where by the law an oath is required, as if such Quaker or Moravian had taken an oath in the usual form. And if any person making such affirmation or declaration shall be convicted of having wilfully, falsely, and corruptly affirmed or declared any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such offender shall be subject to the same pains, penalties, and forfeitures, to which persons convicted of wilful and corrupt perjury are subject.

By 3 & 4 Will. IV. c. 82, Separatists may make an affirmation. (See title "*Oath*," *Vol. V.*)

Presence of prisoner and witnesses.

Presence of Prisoner and Witnesses.]—The witness must deliver in his evidence in the presence of the prisoner, (2 *Hawk.* c. 46, s. 1; *Bac. Ab. Evid.* E; *R.* v. *Crowther*, 1 *T. R.* 125; *R.* v. *Thompson*, 2 T. R. 18), especially on trials affecting the prisoner's life. (*Ib.*)

Before the examination commences, the crown may demand that the witnesses should retire, in order that each may be questioned in the absence of the others. (*Fost.* 47; *Bac. Ab. Evid.* E). And the same

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order will be made on the request of the defendant, but as a matter of indulgence and not of right. (4 *Harg. St. Tr.* 754; *R.* v. *Vaughan, Holt*, 689). It seems questionable whether the court can in either case compel the witness to retire. (*Talf. Dick. Sess.* 377). By the uniform practice of all courts, the attorneys on both sides, whose presence is necessary to the conduct of the case or defence, are exempted from the general rule. (*See Everett* v. *Lowdham*, 5 *C. & P.* 91). And it is usual and reasonable to extend the same indulgence to witnesses who are merely to prove matters of form, to medical witnesses, and witnesses of character. (*Ib.*)

In *Attorney-General* v. *Bulpit*, (9 *Price*, 4), it was laid down as an inflexible rule of the Court of Exchequer, that a witness who remains in court after an order for the witnesses on both sides to withdraw, cannot be examined. And in a very late case it was said by *Park*, J., that in a criminal case he would always reject such a witness. (*R.* v. *Wyld*, 6 *C. & P.* 380; but see *Beamon* v. *Ellice*, 4 *C. & P.* 585).

Who may examine

Who may examine.]—The witness may be examined by the counsel for the party calling him; or, if none be retained, by the judge or presiding magistrate, who may even recall a witness at any stage of the inquiry before the verdict or conviction. (*See R.* v. *Remnant, R. & R. C. C.* 136).

It is usual for only one counsel to examine the same witness; but where the junior counsel is embarrassed in his examination, his leader may step in to his assistance, and proceed in questioning the witness. (*Doe* v. *Roe*, 2 *Camp.* 280).

The prisoner himself may examine or cross-examine the witnesses.

If an improper question be put, the counsel on the other side should immediately interpose, and object to it. If a witness be asked whether a certain representation was made, the opposite counsel may interpose, and ask him whether the representation in question were by parol or in writing; and if the latter, the writing must be produced. (*The Queen's case*, 2 *Brod. & Bing.* 292).

Deaf and dumb witness.

Deaf and Dumb Witness.]—We have already seen when such a witness may be sworn, *ante*, 422. Though the mode of examining a deaf and dumb witness by means of signs made with the fingers is a mode receivable even in capital cases, yet when the witness can write, it seems it would be better to make him write his answers to the questions put to him. (*Morrison* v. *Lennard*, 3 *C. & P.* 127; *per Best*, C. J.)

What questions should be put.

Questions to be put.]—The rules before laid down as to what should be proved, and the degree and kind of proof that should be adduced, will show what questions should in general be put to the witness. If the probable answer to the question would be matter not legally admissible in evidence, such question should be objected to by the opposite party.

Leading questions.

Leading Questions.]—On the examination in chief, the counsel will not be allowed to ask *leading questions*, that is, such as from their nature instruct the witness what he is to say in reply. (*Peake's Evid.* 206; 1 *Phill. Ev.* 268, 7th ed.) But, at the same time, he must state his question in so forcible a way, that it may be perfectly understood, and no material circumstance omitted. And if the witness appears desirous of concealing the truth in order to favour the defendant, or stands in a situation which makes him of necessity adverse to the party calling him, the court will allow a latitude bordering on cross-examination to the prosecutor's counsel. (1 *Phill. Evid.* 269, 7th ed.; *Clarke* v. *Saffery, R. & M., N. P. C.* 126). So, in the examination of a witness to contradict the testimony of another, *leading questions* may be allowed, as whether a written instrument contained certain matter; because otherwise it would be difficult to bring them to any direct contradiction.

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(*Courtecn* v. *Touse*, 1 *Camp.* 44. *See Edmonds* v. *Walter*, 3 *Stark. N. P. C.* 8).

Questions to which the answer yes or no would not be conclusive are not in general objectionable. Thus, a witness called to prove that A. and B. are partners, may be asked whether A. has interfered in the business of B. (*Nicholls* v. *Dowding*, 1 *Stark. C. N. P.* 81). For though he may have interfered, he may not be a partner. (*And see Acerro* v. *Petroni*, 1 *Stark.* 100; *R.* v. *Watson*, 2 *Stark.* 128). To identify a person whom the witness has already described, the person may be pointed out to him, and he may be asked in direct terms, if that be not the person he meant. (*R.* v. *Watson*, 2 *Stark.* 116). Where a witness swears to a certain fact, and another witness is called for the purpose of contradicting him, the latter may be asked in direct terms, whether that fact ever took place. (*Courtcen* v. *Touse*, 1 *Camp.* 43).

The rules of evidence are exactly the same in civil and criminal cases; and in both it is in the discretion of the judge, how far he will allow the examination in chief of a witness to be by leading questions, or to assume the form of a cross examination. (*Reg.* v. *Murphy*, 8 *Car. & P.* 297).

Leading questions are allowable in cross-examination, though in general such questions make the answers open to observation. (*Peake's Evid.* 206; 2 *Stark. Evid.* 132; 1 *Chit. C. L.* 622).

Irrelevant questions.

Irrelevant Questions.]—No question can be put to a witness, the probable answer to which would have nothing to do with the matter in issue. This rule has already been noticed, *ante*, 356, 357.

Questions privileged from being answered.

Questions which need not be answered.]—Questions tending to expose the witness to criminal accusation, punishment, or penalty, need not be answered. (*See* 1 *Phill. Evid.* 276, 7th ed.; 1 *Chit. C. L.* 620; *Maloney* v. *Bartley*, 3 *Camp.* 210; 8 *Ves.* 405). The objection, however, must, it seems, be taken by the witness himself, and counsel will not be allowed to argue it. (*Thomas* v. *Newton*, *M. & M.* 48; *R.* v. *Adey*, 1 *M. & Rob.* 94). A witness may object to answer a question which he thinks will tend to his crimination, though the answer would not lead to an immediate conclusion of guilt. (*Cates* v. *Hardacre*, 3 *Taunt.* 424; *R.* v. *Slaney*, 5 *C. & P.* 213). On an information against several persons for executing an office of trust without taking the oaths, the court refused a motion for leave to inspect such books kept by the defendants in which they had entered their elections, receipts, and disbursements, as it would have compelled them to give evidence against themselves in a criminal prosecution. (*R.* v. *Mead*, 2 *Ld. Raym.* 927; *R.* v. *Worsingham*, 1 *Ld. Raym.* 705; *R.* v. *Cornelius*, 2 *Str.* 1210). And a similar motion was refused, on an information against two overseers for making a rate without the concurrence of the churchwardens. (*R.* v. *Lee*, *cited* 1 *Wils.* 240; 1 *Phill. Evid.* 7th ed. 423; *and see ante*, 379, as to other books).

A witness is not compellable to say whether he published a particular paper if the contents be libellous. (*R.* v. *Barber*, 1 *Stra.* 444).

Upon an appeal against an order of bastardy, a person is not bound to declare whether he is the father of a bastard child. (*R.* v. *St. Mary, Nottingham*, 13 *East*, 58, n.)

Tending to degrade.

It has been settled that a witness is not compellable to answer questions, the answer to which would probably be degrading to his character. (*Cook's case*, *How. St. Trials*, 334; *Friend's case*, 13 *Id.* 17; *Layer's case*, 16 *Id.* 161). And it has been even held a witness is protected from admitting his commission of an offence, although he has received a pardon. (*R.* v. *Reading*, 2 *St. Tri.* 822; *R.* v. *Earl of Shaftesbury*, 3 *St. Tri.* 439). But this has been of late much doubted; and in *Cundell* v. *Pratt*, (3 *C. & P.* 240, n. *b*; 1 *M. & M.* 108. S. C.), *Best*, C. J., said, "I, for one, till I hear it decided by the House of Lords,

shall not go so far as to say that the witness is protected by the rules of law from answering such questions as might disparage her character. I shall only prevent your asking such questions as may subject witnesses to any prosecution for crime; but not such questions as merely tend to degrade them in their character."

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In the case of *Frost* v. *Holloway*, (sitt. K. B. after H. T., 1818), the counsel, in cross-examining a witness, asked him, whether he had not been tried for theft at Reading. The witness refused to answer, and appealed to Lord *Ellenborough*, whether he was bound to answer such a question. Lord *Ellenborough* said, "If you do not answer the question, I will commit you;" adding, "You shall not be compelled to say whether you were guilty or not." (1 *Phill. Ev.* 283, 7th ed. *notis*). And in *R.* v. *Edwards*, (4 *T. R.* 440), where a witness had been guilty of an infamous crime, and had been punished for it, it was considered he might be asked whether he had not undergone the punishment: and see *R.* v. *Barker*, 3 *C. & P.* 589; *R.* v. *Edwards*, (4 *T. R.* 440), where it was held a witness might be asked whether he had stood in the pillory: and see 3 *Esp.* 94; *Harris* v. *Tippet*, 2 *Camp.* 637; 2 *Hawk.* c. 46, s. 169; and further, *post*, "*Rape*," *Vol. V.*

Tending to a forfeiture.

A witness is also privileged from answering any question, the answer to which might subject him to a forfeiture of his *estate;* and it should seem a party is not bound to answer so as to subject himself to any forfeiture of *interest.* (1 *Phill. Ev.* 7th ed.; *Lambert* v. *Rogers*, 2 *Mer.* 489).

Tending to an action or debt.

A witness was not, it seems, formerly compellable to answer any question which might subject him to a civil action, or tend to charge himself with a debt. (Pending the impeachment, Lord *Melville's cases*, 29 *How. State Trials*, 746, 763; 1 *Phill. Evid.* 7th ed. 279; *Cobbett's Parliamentary Debates*, vol. 6, p. 167).

46 Geo. III. c. 37.

But now, by stat. 46 Geo. III. c. 37, intituled "An act to declare the law with respect to witnesses refusing to answer;" reciting, "Whereas doubts have arisen whether a witness can by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself, or to expose him to any penalty or forfeiture, but the answering of which may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit at the instance of H. M., or of some other person or persons;" it is therefore declared and enacted, "that a witness cannot by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse him, or to expose him to penalty or forfeiture of any nature whatever, by reason only, or on the sole ground, that the answering of such question may establish, or tend to establish, that he owes a debt, or is otherwise subject to a civil suit, either at the instance of H. M., or of any other person or persons."

But the right which the parties to a suit have to refuse answering any question is not in any degree affected by this statute; and therefore, on a question of settlement, a rated parishioner is not compellable by the adverse parish to give evidence, as he is directly interested as party to the appeal, and does not come within the words or meaning of the act. (*R.* v. *Woburn*, 10 *East*, 395; *and see R.* v. *Hardwick*, 11 *East*, 579; *R.* v. *Inhabitants of Whitley, Lower*, 1 *M. & Sel.* 636). These cases were decided before the 54 Geo. III. c. 170, *ante*, 436.

Tending to compromise rights.

In general a person is not bound to produce documents, the publication of which may compromise his own or his principal rights; as to produce for inspection title-deeds or the like. Therefore, on a question of settlement, a mortgagee, a rated inhabitant of the appellant parish, subpœnaed by the respondent parish, is not compellable, under a subpœna *duces tecum*, to produce the title-deeds of his mortgagor. (*R.* v. *Upper Boddington*, 4 *D. & R. M. C.* 233). It was also there held, that his attorney could not be allowed to produce an abstract of the deeds, or to give parol evidence of their contents. (*And see Copeland* v. *Watts*, 1 *Stark. C. N. P.* 95; *R.* v. *Woodley*, 1 *M. & Rob.* 390).

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We have already seen what confidential communications to attorneys and counsel are privileged from being divulged in a court, as also certain other communications relating to matters of state, &c., *ante*, 83—85.

If a witness chooses to answer questions which he need not, the answer is conclusive. (*Watson's Trial by Gurney*, 288; *Rose* v. *Blackmore*, 1 *R. & M. C. N. P.* 383.

It has been said, that if a witness answer any question on a matter rendering himself liable to forfeiture or punishment, he cannot afterwards claim his privilege, but must answer throughout. (*East* v. *Chapman*, 1 *M. & M.* 47; 2 *C. & P.* 570, S. C., *cor. Abbott*, C. J.)

What answers are evidence.

What Answers are Evidence.]—Our preceding inquiries as to what should be proved, and the degree and kind of proof to be adduced, will be here applicable, *ante*, 357, 371.

Refreshing memory.

Memorandum to refresh Memory.]—A witness cannot be permitted to read his evidence (5 *St. Tr.* 445; 2 *Hawk.* c. 46, s. 168); but he may refresh his memory from any book or paper made by himself at the time, or shortly after the occurrence of the facts to which it relates, provided he can afterwards swear to the fact from his own recollection; though if he can only maintain its truth by finding it entered there, the papers must be themselves given in evidence. (*Doe* v. *Perkins*, 3 *T. R.* 749; *Kensington* v. *Inglis*, 8 *East*, 289; 2 *Hawk.* c. 46, s. 168). And it seems that the writing *must* have been made contemporaneously with the transaction to which it refers. (*Steinkiller* v. *Newton*, 9 *Car. & P.* 313). *Sed quære* if the document need be made by himself: see *Id.* and *Henry* v. *Lee*, (2 *Chit. Rep.* 124), where it was considered that it need not; but according to the later case of *Meagoe* v. *Simmons*, (3 *C. & P.* 75; 1 *M. & M.* 121, S. C., *cor.* Lord *Tenterden*, C. J.), it must be. In *Burton* v. *Plummer*, (4 *N. & M.* 315), it was held that a clerk might refresh his memory as to the delivery of goods by looking at entries made in his presence by his master in a ledger from entries made by the clerk in a waste book, such entries in the ledger having been checked by the clerk while the facts were fresh in his recollection, and that the waste-book need not be produced. It has been said he may look at papers, in order to refresh his memory, which were not written by himself, but which he has repeatedly inspected, *Burrough* v. *Martin*, 2 *Camp.* 112); but he will not be allowed to refresh his memory with a *copy* of a paper made by himself after he wrote the original, though the original is proved to be so covered with figures as to be unintelligible. (*Jones* v. *Stroud*, 2 *C. & P.* 196; *Burton* v. *Plummer*, 2 *Ad. & Ell.* 341; *R.* v. *St. Martin's, Leicester, Id.* 215). Where a witness had been examined before commissioners of bankrupts, shortly after the act of bankruptcy; semble, that he may refer to the deposition he then made, for the purpose of refreshing his memory as to the date. (*Smith* v. *Morgan*, 2 *M. & Rob*, 257). The memorandum being unstamped will be no objection to his looking at it to refresh his memory. (*Rambert* v. *Cohen*, 4 *Esp.* 213; *Maugham* v. *Hubbard*, 8 *B. & C.* 14; 2 *M. & R.* 5, S. C.)

It has been said that it is necessary he should swear absolutely to the fact which he is called to prove, and that a mere persuasion and belief will not be sufficient proof for the consideration of a jury. (*Adams* v. *Canon*, 1 *Dyer*, 53 b, n. 15; 2 *Hawk.* c. 46, s. 167). But it is now settled that there are cases in which a belief will be available in evidence. Thus a subscribing witness to a deed may swear that he has totally forgotten that he signed it; but on being shown his signature, he may depose that he believes he saw the execution, and the court will be satisfied with his answer. (*Miller's case*, 3 *Wils.* 427; 1 *Chit. C. L.* 617. *And see R.* v. *Inhabitants of St. Martin, Leicester*, 4 *N. & M.* 202).

If the counsel for defendant, in cross-examination, put a paper into the witness's hand to refresh his memory, the opposite counsel has a right to look at it, without being bound to read it in evidence; and the op-

posite counsel may also ask the witness when it was written, without being bound to put it in. (*R.* v. *Marsden*, 2 *C.* & *P.* 603, *cor. Tenterden*, C. J.; *and see Gregory* v. *Tavernor*, 6 *C.* & *P.* 281; *Reg.* v. *Duncombe*, 8 *Car.* & *P.* 369).

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Cross-examination.]—The following rules as to the practice to be observed in criminal cases have been laid down by the judges, (7 *Car.* & *P.* 676):—

Cross-examination.

At a meeting of twelve of the judges, for the purpose of choosing the spring circuits of 1837, (*Littledale*, J., *Bosanquet*, J., and *Coleridge*, J., being absent from indisposition), a discussion took place as to some points which were thought likely to occur at the assizes, in consequence of the recent act for allowing prisoners, indicted for felony, to make full defence by counsel; and the following seemed to be the course of practice which the judges present thought it would be most advisable to adopt:—

1. That where a witness for the crown has made a deposition before a magistrate, he cannot, upon his cross-examination by the prisoner's counsel, be asked whether he did or did not, in his deposition, make such or such a statement, until the deposition itself has been read, in order to manifest whether such statement is or is not contained therein; and that such deposition must be read as part of the evidence of the cross-examining counsel.

2. That, after such deposition has been read, the prisoner's counsel may proceed in his cross-examination of the witness as to any supposed contradiction or variance between the testimony of the witness in court and his former deposition; after which the counsel for the prosecution may re-examine the witness, and after the prisoner's counsel has addressed the jury, will be entitled to the reply. And in case the counsel for the prisoner comments upon any supposed variance or contradiction without having read the deposition, the court may direct it to be read, and the counsel for the prosecution will be entitled to reply upon it.

3. That the witness cannot, in cross-examination, be compelled to answer, whether he did or did not make such or such a statement before the magistrate, until after his deposition has been read, and it appears that it contains no mention of such statement. In that event the counsel for the prisoner may proceed with his cross-examination: and if the witness admits such statement to have been made, he may comment upon such omission, or upon the effect of it upon the other part of his testimony; or if the witness denies that he made such statement, the counsel for the prisoner may then, if such statement be material to the matter in issue, call witnesses to prove that he made such statement. But in either event, the reading of the deposition is the prisoner's evidence, and the counsel for the prosecution will be entitled to reply.

4. If the only evidence called, on the part of the prisoner, is evidence to character, although the counsel for the prosecution is entitled to the reply, it will be a matter for his discretion whether he will use it or not. Cases may occur in which it may be fit and proper so to do.

5. In cases of public prosecutions for felony, instituted by the crown, the law officers of the crown, and those who represent them, are, in strictness, entitled to the reply, although no evidence is produced on the part of the prisoner.

These resolutions are binding upon the prisoner's counsel; but the judge may question a witness as to any discrepancy between his deposition and evidence. (*Rex* v. *Edwards*, 8 *C.* & *P.* 26).

When the examination in chief of the witness is concluded, but not before (*Colledge's case*, 8 *How. St. Tr.* 592), the prisoner or his counsel has power to cross-examine him as to every part of his testimony. (4 *Bla. Com.* 355).

When once a witness is *sworn*, though he give no evidence for the party calling him, he may be cross-examined. (*Phillips* v. *Eamer*, 1 *Esp. N. P. C.* 357). However, circumstances may arise which will not give

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this right to the opposite counsel; as where the plaintiff's counsel called "Captain S.," and "Captain *Hugh* S." answered and was sworn; and the plaintiff's counsel, after asking him a few questions, ascertained that it was "Capt. *Francis* S." whom they meant to examine. This was held not to give the other side a right to cross-examine Capt. *Hugh* S., as he was only examined by mistake. (*Clifford* v. *Hunter*, 3 *C. & P.* 16; 1 *M. & M.* 113, S. C.) And where a person called to produce a document was sworn by mistake and asked a question which he did not answer, it was held the opposite party was not entitled to cross-examine him. (*Rush* v. *Smith*, 1 *Crom., M. & R.* 94).

If the prisoner is not assisted by an advocate, it is the duty of the court to ask any questions which they think may tend to his benefit. (1 *Chit. C. L.* 407, 621).

When not advisable to cross examine.

If the witness tell the *whole* truth, a cross-examination may be dangerous, as it may have the effect of rendering his story more circumstantial, and impressing the jury with a stronger opinion of its truth. It is better, in such a case, either not to cross-examine him at all, or to confine the questions to his credibility, by impugning his means of knowledge, his disinterestedness, his integrity, or his veracity. If the witness tell only *part* of the truth, then the opposite counsel, if the residue be favourable to his client, will immediately proceed to cross-examine him as to it; but if unfavourable, the counsel will either refrain altogether from cross-examining him, or will confine his questions to the witness's credibility, as above mentioned. If, on the other hand, the evidence of the witness be false, then the whole force of the cross-examination must be directed to his credibility; and afterwards the truth may be proved by other witnesses. (*Arch. C. Pl. & Evid.* 116, 117).

What questions may be put.

With respect to what questions may be put to a witness on cross-examination the practice appears rather confused; insomuch that no general rule can be well laid down on the subject. Certain it is the opposite party is allowed greater latitude in the cross-examination than the party examining in chief.

Thus, leading questions may be asked, though, indeed, the witness must not have put to him the very words he is to echo back again. (*Peake's Evid.* 206; *Rex* v. *Hardy*, 20 *How. St. Tri.* 755). 2nd. Where a witness on cross-examination denies having used particular expressions in the presence of the parties, the opposite counsel examining a person to contradict the witness, is not at liberty to lead, by reading from his brief the words denied; the conversation spoken to by the first witness being evidence of itself. (*Hallett* v. *Cousins*, 2 *M. & Rob.* 238).

And the questions must not assume facts to have been proved, or that particular answers have been given contrary to the facts. (*Stark. Evid. Part II.* 132; *Sainthill* v. *Bound*, 4 *Esp.* 74). In strictness, a witness cannot be asked if, at a former trial, he swore differently from what he is now swearing; but an examined copy of the record of the former trial, or at least the Nisi Prius record (if the cause has been tried at Nisi Prius), should be proved; (*Fisher* v. *Kitchingman*, *Barnes*, 449; *Foster* v. *Compton*, 2 *Stark.* 364); and then it should be proved that the witness swore at that trial, either by having it read from the judge's notes, or proved upon oath from the notes or recollection of any person who was present at the time. (*Mayor of Doncaster* v. *Day*, 3 *Taunt.* 262; 12 *Mod.* 318; *Gilb. Ev.* 68, 69). A reporter to a newspaper, who is called as a witness, cannot be asked in cross-examination whether, in articles which he has written in that newspaper, he has not called the opposite party by nicknames, as that it is a part of the contents of the article. (*Reg.* v. *Murphy*, 8 *Car. & P.* 297). A prisoner's counsel has no right to ask a witness for the prosecution whether he has always told the same story; the question ought to be, "have you always said so, except before the magistrates." (*Reg.* v. *Shellard*, 9 *Car. & P.* 279). So it is not allowable on cross-examination, in the statement of a ques-

5. *Witnesses, examination of.*

tion to a witness, to represent the contents of a letter, and to ask him whether he wrote a letter to any person with such contents, or contents to the like effect, without having first shown the witness the letter, and having asked him whether he wrote that letter. (*Queen's case*, 2 *B. & B.* 286). And if, on cross-examination, a witness admits a letter to be of his handwriting, he cannot be questioned by counsel whether statements such as the counsel may suggest are contained in it; but the whole letter must be read. (*Id.* 288). In the ordinary course of proceeding, such letter must be read as part of the cross-examining counsel's case. The court, however, may permit it to be read at an earlier period if the counsel suggest that he wishes to have the letter read immediately, in order to found certain questions upon it; considering it, however, as part of the evidence of the counsel proposing such a course, and subject to the consequences thereof. (*Id.*) See further as to what questions may be asked, *Rex* v. *Nichols*, 5 *Car. & P.* 600; *Rex* v. *Hodgkiss*, 7 *Car. & P.* 298.

The questions must be either relevant and pertinent to the matter in issue, or calculated to elicit the witness's title to credit. In order to try a witness's credit, facts may be supposed, apparently connected with the cause, which have no real existence except in the imagination of the counsel. (*Peake's Evid.* 206; 1 *Phill. Evid.* 276; *Stark. Evid. Part II*). But how far questions may be asked for the same purpose, which have no seeming tendency to bear on the point in issue, appears still to be dubious. It is, perhaps, better left to the discretion of the court, in each particular case, to prevent the counsel from too great a digression from the matter in issue. (1 *Chit. C. L.* 622). At all events, a witness cannot be cross-examined as to any distinct collateral fact for the purpose of afterwards impeaching his testimony by contradicting him. (*Stark. Evid. Part II.* 134; *Spenceley* v. *De Willott*, 7 *East*, 108; 2 *Stark.* 156). And should such questions be put and answered, evidence cannot be afterwards adduced for the purpose of contradiction. (*Harris* v. *Tippet*, 2 *Camp.* 638; *Rex* v. *Watson*, 2 *Stark.* 156; 1 *Chit. C. L.* 622, 2nd ed.)

If a witness, when examined in chief as to the occurrence of a fact, answer that he does not remember it, the counsel on the opposite side cannot give evidence of a former declaration by the witness of the fact having occurred, unless he have in cross-examination questioned the witness as to such declaration; for the fact may have occurred, and the witness have formerly declared his knowledge of it, and yet he may not recollect it at the time of his examination. (*The Queen's case*, 2 *Brod. & Bing.* 299).

A party at the trial is not to be permitted to show, by cross-examination and subsequent evidence, that a witness, who has been examined in chief by his adversary, is the real party to the suit; as, if such be the fact, the proper course is to object to the competency of the witness in the first instance. (*Dewdenay* v. *Palmer*, 4 *Mee. & W.* 664; 7 *Dowl. P. C.* 177).

On an application for a new trial one of the witnesses made an affidavit. The same witness was called on the second trial. It was proposed and allowed to cross-examine the witness from an office copy of her affidavit, which was ordered by the judge's order (in the usual form) to be admitted as a true copy: and it was held not necessary to have the original affidavit to cross-examine upon. (*Davies* v. *Davies*, 9 *Car. & P.* 252).

In a case of felony, in order to prove that a witness did not state a particular fact before the magistrate, his deposition must be put in, and a witness cannot be questioned as to what he either did or did not state before the magistrate, without first allowing him to read, or to have read to him, his deposition taken before the magistrate. (*Reg.* v. *Taylor*, 8 *Car. & P.* 726).

If a party robbed go within a few hours after the robbery to a con-

5. *Witnesses, examination of.*

stable, and mention the name of the person who robbed him, the party robbed may be asked at the trial whether he named any person to the constable, but ought not to be asked what name he mentioned; and the constable may be asked whether, in consequence of the party mentioning a name to him, he went in search of any person; and if so, who that person was. (*Rex* v. *Wink*, 6 *C. & P.* 397).

Where a witness for the prosecution at the Old Bailey, on being asked to repeat an answer which she had previously given before the whole of it had been taken down, omitted what the prisoner's counsel thought an important part of it, and denied that she had ever uttered such part; the judges allowed the short-hand writer of the court, who had taken down the answer, to be examined as a witness to show whether the words had been used or not. (*Rex* v. *Slater*, 6 *C. & P.* 334).

Re examination.

Re-examination.]—When the cross-examination is completed, the counsel by whom the witness was called is entitled to re-examine him for the purpose of explaining any matter into which confusion has been introduced by the questions of the adversary; but he can only put questions on matters touched on or referred to in the cross-examination. (*Talfourd's Dick. Sess.* 382; *Prince* v. *Sams*, 7 *Ad. & E.* 627; 3 *Nev. & Per.* 139). But if a witness for the prosecution shows any unfair bias, the counsel who calls him may cross-examine him. (*Reg.* v. *Chapman*, 8 *Car. & P.* 558). If a witness, upon his cross-examination, admit his having used certain expressions in a conversation with a person not a party to the cause, the opposite counsel, in re-examining the witness, is confined to such questions as may elicit the meaning of the expressions, and the motives of the witness for using them. But where a witness deposes to certain expressions being used by a party to the cause, the counsel for that party is entitled to re-examine the witness as to the whole of the conversation in which the expressions occurred; because the expressions are given in evidence in such a case as an admission of the party, and the whole of the admission should be taken together. (*The Queen's case*, 2 *Brod & Bing.* 294; *and see Dunn* v. *Aslett*, 2 *M. & R.* 122).

On the trial of A., for attempting to discharge loaded arms at B., B., (with a view to discredit his evidence), having been cross-examined as to whether he had not used violent language towards his father, which he admitted he had; on re-examination, B. was allowed to be asked how his father had acted towards him before he used the language that he had been cross-examined to. (*Reg.* v. *St. George*, 9 *Car. & P.* 483).

A witness cannot be asked as to what another witness has said on other occasions than that which was the subject of the trial; for what a witness has said at other times is only matter for the cross-examination of the witness himself. (*Ib.*)

A defendant was tried for publishing a letter, purporting to be the resolutions of a body of persons calling themselves the General Convention, and in one part of it it stated that an outrage had been committed on the people of Birmingham, by a force "acting under the authority of men, who, when out of office, sanctioned and took part in the meetings of the people." A witness for the crown stated, in his cross-examination, that he had formerly belonged to the convention, but had since resigned, and had become a town councillor of Birmingham. It was not permitted to ask him further, in cross-examination, as to what he said at a meeting at which the convention was agreed on, but which took place nearly a year before the publication of the alleged libel. (*Reg.* v. *Collins*, 9 *Car. & P.* 456).

In an action for use and occupation, the question was, whether a house had been let to the defendant or her sister. A witness for the plaintiff deposed that it was let to the defendant; and while the defendant's witnesses were under examination, to prove that the letting was

to her sister, the defendant came into court. It was proposed, and permitted, on the part of the plaintiff, to recall his witness, to state that, now he had seen the defendant again, he was quite positive that it was she who took the house. (*Roe* v. *Day*, 7 *Car. & P.* 705).

5. *Witnesses, expenses of.*

But where any new matter occurs to the counsel who called the witness, which he considers important, and respecting which he is not allowed to examine the witness, he may request the court to do so; and the court generally complies with such request. Sometimes, indeed, where the counsel has omitted to bring forward some merely formal proof, the court will allow it to be afterwards adduced, though the case has been closed. (*Rex* v. *Watson*, 6 *Car. & P.* 653).

A witness was asked by the prisoner's counsel, on cross-examination, whether he had not become bail for a witness previously examined. He replied, yes; and that he believed it was on a charge of keeping a gaming-house. In order to prevent any impression against the character of the party so accused, the court, on the suggestion of the counsel for the prosecution, allowed such party to be called up again, and asked whether the charge was in fact true or false. (*Rex* v. *Noel*, 6 *C. & P.* 336).

Evidence for defendant.

Evidence for Defendant.]—After the prosecutor has concluded his case, the defendant, if not entitled to an acquittal on some point of law, is called on to give in his evidence for the defence. (See the course of a trial, *post*, "*Trial*," "*Sessions*," *Vol. V.*) The mode of conducting such evidence may be collected from the preceding observations: and see particularly some points relative to discrediting the testimony of witnesses, *ante*, 446; and as to evidence of character, *ante*, 382.

Evidence in reply.

Evidence in reply.]—When the defendant's evidence is closed, the prosecutor's counsel may offer any evidence in reply which is strictly applicable to the defence, and which could form no part of his original case. Thus, he may give specific contradictions to the witnesses on their denials on cross-examinations; he may call persons to swear that they would not believe the witnesses on their oaths, and may apply an answer to any matter of excuse which the prisoner has set up, and which he could not anticipate; but he must not make a new case, or seek to fill up the chasms or supply the deficiencies of that on which he originally relied. (*Talfourd's Dick. Sess.* 387; *George* v. *Radford*, 3 *C. & P.* 464; *Whittingham* v. *Bloxham*, 4 *C. & P.* 597; *R.* v. *Hilditch*, 5 *C. & P.* 299; *P.* v. *Findon*, 6 *C. & P.* 132).

When evidence is offered in reply in cases of misdemeanor, the defendant's counsel has a right to address the jury on such evidence. (*Ib.*)

Which party shall conclude.

The counsel of that party which doth begin to maintain the issue ought to conclude. (*Tri. per Pais*, 220).

Where the defendants have pleaded a joint plea of not guilty, the judge will not allow the counsel of each defendant, either to cross-examine separately, or to address the jury separately. (*Seale* v. *Evans*, 7 *Car. & P.* 593).

V. Expenses of Witnesses and their Privileges during Attendance.

Expenses of witnesses.

The expenses of witnesses, and as to how far they may refuse attendance without a payment of them, have been already considered, *ante*, "*Costs*," *Vol. I.*, *and see ante*, 449.

Privileges of.

Witnesses, whether subpœnaed, or bound by recognizance to appear, or appearing voluntarily after being asked to do so, (*Meekins* v. *Smith*, 1 *H. Bla.* 636; *Arding* v. *Flower*, 8 *T. R.* 536), are protected from arrest whilst attending the court, not only on the day mentioned in the

7. *Forms.*

subpœna, &c., but also on every day of the same sittings, assizes, or sessions, until the cause is tried. They are also privileged in like manner, during a *reasonable* time, before and after the trial, whilst coming to or returning from the place were the sittings, assizes, or sessions are held. (*Lightfoot* v. *Cameron*, 2 *Bla. Rep.* 1113; *Holiday* v. *Pitt*, 2 *Stra.* 986; *see Gibbs* v. *Philipson*, 1 *Russell & Mylne*, 19; *Tidd*, 9th ed. 195—198; 1 *Chit. C. L.* 614). If a witness under these circumstances be arrested, the court out of which the subpœna issued, or the judge of the court in which the cause is to be or has been tried, will, upon application, order him to be discharged. (*Id.*)

VI. Bill of Exceptions and Demurrer to Evidence.

Bill of exceptions.

When an exception is made by any party to a witness, which is overruled by the court, the opposite side have, in *civil* proceedings, the power of appealing from his decision by tendering a *bill of exceptions*. But this practice does not obtain in criminal proceedings—at all events in treason and felony. (1 *Chit. C. L.* 622. *See Tidd*, 9th ed. 862; *Rosc.* 109).

Where evidence is rejected by a judge at *Nisi Prius*, the counsel proposing it ought to make a formal tender of it to the judge, and request him to take a note of it, and if the judge decline, he should tender a bill of exceptions, otherwise he will not be allowed to raise before the court any questions arising out of such evidence, if the judge's note does not shew the point to have been raised at the trial. (*Gibbs* v. *Pike*, 9 *M. & W.* 351).

Demurrer to evidence.

A demurrer to evidence is a proceeding by which the judges are called upon to determine what the law is upon certain facts which are brought forward in evidence, and is therefore analogous to a demurrer upon facts alleged in pleading. (*Gibson* v. *Hunter*, 2 *H. Bla.* 205; *Tidd*, 9th ed. 865, 6). It can be of very little use and is rarely ever adopted in criminal proceedings, since the crown is never compellable to join in demurrer; but the judge directs the jury to find a special verdict, the legal effect of which the court will afterwards determine. (5 *Co.* 104; *Gibson* v. *Hunter*, 2 *H. Bla.* 187).

VII. Forms.

(1). Subpœna to give evidence at the sessions.

Victoria, by the grace of God, of the united kingdom of Great Britain and Ireland, queen, defender of the faith. To A. B., C. D., and E. F., greeting. We command you and every of you, that all business being laid aside, and all excuses whatsoever ceasing, you do in your proper persons appear before our justices assigned to keep the peace in our county of , and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at the [general quarter sessions of the peace] to be holden at , in and for the said county, on , the day of , at the hour of ten in the forenoon of the same day, to testify the truth, and give evidence on behalf of [the inhabitants of the parish of , in the said county,] against [A. O., in a case of bastardy]. And this you are in nowise to omit, nor any of you to omit, on pain of one hundred pounds. Witness , the day of , in the year of our reign.

There may be four witnesses put in one subpœna. (2 *Cowp. R.* 846; 1 *Phill. Ev.* 3; *ante*, 447).

(2). A subpœna ticket thereon.

To Mr. A. W.

By virtue of her majesty's writ of subpœna to you directed, and herewith shown to you, you are personally to be before his majesty's justices of the peace for the county of , at [the general quarter sessions of the peace] to be holden for the said county at , in the said county, on , the day of next, to testify the truth, and to give evidence on behalf of [the inhabitants of the parish of in the said county,] against [A O., in a case of bastardy]. And this you are not to omit, upon pain of one hundred pounds. Dated this day of in the year By the Court,

C.

Victoria, &c. [as in the common subpœna, *ante*, 462, to the words "to testify the truth," &c. and then proceed as follows:] *And also that you, or one of you, do produce and shew forth at the time and place aforesaid a certain* [*bill of exchange, purporting to bear date on, &c., and to be made and drawn by one upon and accepted by one , and whereby the said requested the said , two months after the date thereof, to pay to him the said , or his order, the sum of for value received*], *then and there to testify and shew, before the grand inquest, of all and singular those things which you or either of you know, or the said bill of exchange doth import, of and concerning a certain bill of indictment to be preferred, &c.* (Proceed as in writ, *supra*, No. 1).

7. Examination by justices.

(3). Subpœna *duces tecum* at the sessions.

[Commencement as usual, *post*, "*Recognizance*," *Vol. V*]—*The condition of this recognizance is such, that if the above bound A. W. shall personally appear at the next general quarter sessions of the peace* (or "*at the next general assize*") *to be holden at , in and for the said county, and then and there give such evidence as he knoweth, upon* [*a bill of indictment to be exhibited by A. I., of , yeoman, to the grand jury, against A. O., late of in the said county, yeoman, for the feloniously taking and carrying away , the property of*]; *and in case the said bill be found a true bill, then if the said A. W. shall then and there give evidence to the jurors that shall pass on the trial of the said A. O. upon the said bill of indictment, and not depart thence without leave of the Court, this recognizance to be void, otherwise of force.*

(4) Condition of a recognizance to appear and give evidence at the sessions or assizes.

Summons of a Witness. *Post, Examination Forms* (No. 4). *See* title "*Summons*," *Vol. V.*

Examinations by Justices before Trial.

UNDER this title will be considered the mode in which an offence should be investigated by a magistrate on an accused party being brought before him before trial, previous to discharging, bailing, or committing such accused for trial.

As to the examination of parties on the trial of an indictment, &c., see *ante*, 450; as to the examination of them on convictions, see "*Convictions*," *Vol. I.*

We will divide our considerations under this title as follows, *viz.*

I. *Time and Place of Examination*, 464.

II. *Examination of Witnesses against Accused*, 464.

III. *Compelling attendance of Witnesses*, 465.

IV. *Witnesses refusing to Answer*, 465.

V. *Examination of Accused*, 466.

VI. *Examinations to be put into Writing*, 467.

VII. *Obstructing Examination*, 470.

VIII. *Remanding Accused for further Examination*, 470.

IX. *Discharging Accused*, 472.

X. *Bailing or committing him*, 473.

XI. *Recognizance to prosecute and give Evidence*, 473.

XII. *How Examinations, &c. to be kept, and right of Party to Copies*, 474.

XIII. *Certifying Examinations*, 475.

XIV. *Forms*, 475.

2. *Examination of witnesses against accused.*

I. Time and Place of Examination.

1. Time and place of examination.

The accused being arrested and in custody should as speedily as possible be taken before a justice of the peace of competent jurisdiction, to hear and be examined concerning the offence imputed to him. If it be late in the evening, and no justice of the peace sitting in his public capacity, it is not reasonable, unless in crimes of a very heinous nature, or other peculiar circumstances justify it, that a justice of the peace should be called upon to examine into the charge at such an unseasonable hour. But if the time at which an accused party is brought before the justice be not unseasonable, he must either go into the case or desire the accused to be taken before another justice; and if, under such circumstances, he remands the accused, ordering him to be brought up at another time, he is liable to an action of trespass. (*Edwards* v. *Ferris*, 7 *C. & P.* 542).

It may be public or private.

The examination may take place either in public or private. The justice may exclude an attorney or counsel if he likes (*Cox v. Coleridge*, 1 *B. & Cres.* 37; 2 *D. & R.* 86, S. C.; *Collier* v. *Hicks*, 2 *B. & Adol.* 663. *See Daubney* v. *Cooper*, 10 *B. & Cres.* 237); but not the accused. (*Dick. J., Examination, infra*). In many cases a private examination is desirable.

II. Examination of Witnesses against Accused.

2. Examination of accusers and witnesses.

The first step in the investigation as to the offence is to call for and examine the witnesses for the accusers.

The whole proceedings of the examination should be in the presence and hearing of the accused. (1 *Leach*, 202, 309, 500, 503 a.; *R.* v. *Paine*, 5 *Mod.* 163; 1 *Salk.* 281; 1 *Ld. Raym.* 729, S. C.; *Rex* v. *Commins*, 4 *D. & R. M. C.* 94).

The witness should be informed as to the purpose for which he is required to give evidence, or, in other words, that there is a person under charge against whom he is required to give evidence, otherwise the witness could not be punished for refusing to give evidence. (*Cropper* v. *Horton*, 4 *D. & R. M. C.* 42).

Before administering the oath to the witness, the magistrate had better inquire who and what the witness is; and in some cases it would be as well shortly to ascertain what he intends to prove.

It seems also that no witness ought to be examined who is not competent, according to the general rules of evidence, to give evidence, and as to which see *ante*, 451.

After the competency of the witness is ascertained, he should be sworn before the justice as in other cases. (*Ante*, 421).

The following is the usual form of oath prescribed to be taken by a Christian: "*You shall true answer make to such questions as shall be demanded of you; so help you God.*" If the witness be a Quaker, see the form, *ante*, 452.

Must be on oath.

The examination of the witness must be upon oath administered previous to the examination, or such examination will amount to nothing. (*Dalt. J.*, c. 164, s. 3; 1 *Hale*, 586; *R.* v. *Kiddy*, 4 *D. & R.* 734).

Even a peer must be examined on oath, and not upon his honour. (*Dick. Jus., Examination*, III.)

If a magistrate committed a party without an oath made before him, he would be liable to an action if the prisoner were acquitted. (1 *Hale*, 586; *Dalt. J.*, c. 164; 1 *Leach*, 202, 309; *Morgan* v. *Hughes*, 2 *T. R.* 225, 231).

After the witness, being competent, is duly sworn, the magistrate proceeds to examine him. As to what questions may be asked, see *ante*, 453. The witnesses should be examined before the accused, and

he may cross-examine them. (*Ante*, 457). They should, especially if they appear unwilling, be examined separately; and no one who has already been completely examined should be permitted, if it be possible to avoid it, to inform any other who has yet to be examined to what particulars his evidence has extended. Indeed, in most cases, it would be best and fairest to keep all the witnesses away but the one under examination. (*See Dalt. J.*, 165; *Taylor* v. *Lawson*, 3 *C. & P.* 543).

4. *Witnesses refusing to answer.*

The magistrate cannot be required to hear evidence which ought not to affect his determination. (*R.* v. *Minshull*, 1 *Nev. & M.* 277).

Magistrate need not hear unnecessary evidence.

As to putting down the examination and answers in writing, *see post*, 467.

III. Compelling Attendance of Witnesses.

3. Compelling attendance of witnesses.

We have already noticed the power of a magistrate to compel the attendance of a witness. (*Ante*, 447). If a person, within the magistrate's jurisdiction, who can give material evidence against the accused, in cases of felony or misdemeanor, will not voluntarily attend, such attendance may be enforced by a summons issued against him by the justice, and directed to a constable. Such summons should be personally served on him, and the original shewn to him at the same time. (*Ante*, 448). See the form, *post*, 476, (No. 4). He might be indicted for a disobedience to it, or the officer may, it seems, on a warrant against the witness, founded on his refusal to obey the summons, even enforce his attendance. (2 *Hale*, 282; 1 *Chit. C. L.* 76; *sed vid. Shuttleworth*, 8, 9). But a magistrate has no right to issue a warrant for the apprehension of a person to attend *to find bail for his appearance as a witness at the assizes*, although it is sworn that the witness is material, and has refused to obey a summons, which had previously been issued, to give evidence before the magistrate. (*Evans* v. *Rees*, 4 *Per. & D.* 32; 12 *Ad. & E.* 55, S. C.) The justice had no authority to require bail at such a stage of the proceedings; "but (*per Denman*, C. J.) if the warrant had merely recited the witness's refusal to attend, and directed the constable to bring him, there might not be much doubt that it would have been justifiable." (12 *Ad. & E.* 59).

It should seem that, upon the reasonable request of the defendant, the magistrate has a similar power to bring before him any witness who may be able to give material evidence on his behalf. (3 *Inst.* 79; 4 *Bla. Com.* 359).

On the application and notice of two inhabitants of a parish, a constable may be compelled to appear before a magistrate to enter into a recognizance to prosecute a party for keeping a disorderly house within the district. (25 Geo. II. c. 36, s. 5; *and see* 58 Geo. III. c. 70, s. 7; *ante*, "*Disorderly House;*" and see various other statutes throughout the titles of this work, compelling the attendance of witnesses).

IV. Witnesses Refusing to Answer.

4. Witnesses refusing to answer.

It does not appear to be expressly decided whether a justice of the peace has jurisdiction to commit to prison a person who refuses to be examined on oath and give evidence as a witness touching a charge against a party then before the justice on examination. It seems clear he cannot be committed for such a refusal without there is a person charged with the offence, and without he (the witness) is apprised of that fact and the nature of the charge. (*Cropper* v. *Horton*, 4 *D. & R. M. C.* 42) (*a*). But it seems he may be committed for such a refusal

(*a*) *Et per Bayley*, J.—"The facts found in this case do not raise the question first submitted to our consideration, and therefore I shall studi-

5. *Accused party.*

where there is a person charged, and he is apprised of that fact and the nature of the charge. At all events to justify the commitment for refusing to answer a question, the question put must be one upon which the party may be lawfully compelled to answer, and therefore the commitment in such a case should set forth the question and answers, if any, so that the court may be enabled to judge of their propriety. (*In re Hadland*, 1 *Dowl. N. S.* 835). As to what questions a party is privileged from answering, *see ante*, 454. Where a witness who was summoned by commissioners of bankrupt under the 6 Geo. IV. c. 16, s. 35, was required by the commissioners to read certain entries in a ledger, and on his refusal to do so, was committed by them for refusing to answer a question; it was held that the request to read was neither in form nor substance a question, and that the commitment was illegal. (*Isaac* v. *Impey*, 10 *B. & Cres.* 442).

It was decided in *Bennett* v. *Watson*, (3 *Maule & Sel.* 1), that a justice of the peace might commit a feme covert who was a material witness upon a charge of felony brought before him, and who refused to appear at the sessions to give evidence, or to find sureties for her appearance.

A witness might, it is apprehended, be indicted at common law for the refusal.

V. Examination of the accused Party.

5. Examination of accused.

Should not be on oath.

If the slightest case even of suspicion be made out against the accused, he should be asked by the justice if he has any thing to say against the charge. He should not be put on his oath. (1 *Hale*, 585; 2 *Hale*, 52, 120, 284; *Bull. N. P.* 284; 2 *Hawk.* c. 46, s. 87). Where the examination of a prisoner before the magistrate *purports* to have been taken on oath, no evidence on the trial is admissible to show that in fact the examination was not on oath. (*R.* v. *Hornage*, 1 *Stark. Rep.* 242 (*b*); *R.* v. *Rivers*, 7 *Car. & P.* 177; *R.* v. *Bentley*, 6 *Id.* 148).

Prisoner should be allowed to make his statement freely.

A prisoner, when taken on suspicion before a magistrate, is to be allowed to speak voluntarily, and give his account freely; and he ought not to be pressed to answer, examined, or questioned by the magistrate like a common witness: and in *R.* v. *Wilson*, (*Holt's N. P. C.* 597), when a person had been so examined, his account was rejected as in-

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ously forbear giving any opinion upon that point. The question then is, whether the warrant of commitment given in evidence, or even the facts proved dehors the commitment, shew a sufficient cause for the imprisonment. At all events, before the commitment could be justified, it must distinctly appear that the party committed was apprised that there was some person under charge, against whom his evidence was required to be given. Now there is nothing either in or out of the warrant to enable me to say that there had been an information upon oath, or any person charged before the magistrate, so as to render it necessary that the plaintiff should be examined as a witness. The parol evidence upon this subject is very unsatisfactory; and on reading the warrant, I cannot collect that there had been an information on oath before the magistrate against any particular person under charge, for it contains merely a general assertion that the plaintiff was committed for refusing to give evidence touching a certain riot and disturbance committed. I am therefore of opinion that the defendant has not made out a sufficient justification of the alleged trespass."

(*b*) This was an indictment for sacrilege alleged to have been committed in Sheffield church. The prosecutors tendered in evidence the examination of Hornage before the magistrate previous to his commitment. This was written under the following words, which, except as to the name, were printed:—"The examination of —— Hornage, taken on oath before me,"

admissible, though nothing like a threat or promise had been used. (1 *Phill. Ev.* 106; *R.* v. *Rivers*, 7 *C. & P.* 177; *sed vide R.* v. *Ellis*, *Ry. & M.* 432). But where a prisoner is willing to make a statement, it is the duty of magistrates to receive it; but before they do so, they ought entirely to remove any impression that may have before been on the prisoner's mind, that the statement may be used for his own benefit; and the prisoner ought also to be told, that what he thinks fit to say will be taken down, and may be used against him on his trial. (*Reg.* v. *Arnold*, 8 *Car. & P.* 621; *R.* v. *Green*, 5 *C. & P.* 312. See further as to the confessions of a prisoner, *Vol. I.* tit. "*Confessions.*")

6. *Taking down in writing, &c.*

If the offender, upon his examination before the justice of the peace, shall confess the matter, it shall not be amiss that he subscribe his name or mark to it. (*Dalt.* c. 164).

See further as to confessions of the accused, and the care to be adopted by justices in taking and regarding them, "*Confession*," *Vol. I.*

Witnesses for accused.

The accused may, if he choose, call witnesses, and they may be examined on oath, like the witnesses against him; (*Dalt.* c. 165); and their examination should be put into writing, like the rest. (4 *Bla. Com.* 360).

Several offenders.

If more than one person be accused, each of them should be examined apart from the rest, in order that an opportunity may be afforded of detecting any variations in their story. (1 *Chit. C. L.* 83).

VI. Taking down Examination in Writing, &c.

6. In *felonies* the examinations are to be put into writing, &c. before bailing or committing.

By the 7 Geo. IV. c. 64, s. 2, reciting "it is expedient to amend and extend the provisions of two acts, the first passed in the first and second years of the reign of King Philip and Queen Mary, intituled 'An Act appointing an order to justices of peace for the bailment of prisoners,' and the second passed in the second and third years of the same reign, intituled 'An Act to take examination of prisoners suspected of manslaughter or felony,'" it is enacted, "that two justices of the peace, before they shall admit to bail, and the justice or justices, before he or they shall commit to prison any person arrested for *felony*, or on *suspicion of felony*, shall take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing; and the two justices shall certify such bailment in writing; and every such justice shall have authority to bind, by recognizance, all such persons as know or declare any thing material touching any such felony, or suspicion of felony, to appear at the next court of oyer and terminer, or gaol delivery, or superior criminal court of a county palatine, or great sessions or sessions of the peace, at which the trial thereof is intended to be, then and there to prosecute, or give evidence against the party accused; and such justices and justice respectively shall subscribe all such examinations, informations, bailments, and recognizances, and deliver, or cause the same to be delivered, to the proper officer of the court in which the trial is to be, before or at the opening of the court."

Power to bind by recognizance, &c.

Examinations, &c. to be delivered to the court.

&c., and was undersigned by the magistrate. Upon the objection being taken, the examination was rejected because it purported to have been taken on oath; and *Le Blanc*, J., would not permit a witness to be examined for the purpose of shewing that no oath had in fact been administered to the prisoner, saying that he could not allow that which had been sent in under the hand of a magistrate to be disputed.

6. *Taking down in writing, &c.*

7 Geo. 4, c. 64.

In *misdemeanors* the examinations are to be put into writing before bailing or committing.

By sect. 3, "every justice of the peace before whom any person shall be taken on a charge of *misdemeanor*, or *suspicion thereof*, shall take the examination of the person charged, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison or require bail from the person so charged; and in every case of bailment shall certify the bailment in writing, and shall have authority to bind all persons, by recognizance, to appear to prosecute, or give evidence against the party accused, in like manner as in cases of felony; and shall subscribe all examinations, informations, bailments, and recognizances, deliver, or cause the same to be delivered, to the proper officer of the court in which the trial is to be, before or at the opening of the court, in like manner as in cases of felony."

Sect. 4 relates to proceedings before coroners; see *ante*, tit. "*Coroner*."

Penalty on justices &c. for not complying with act.

Sect. 5. "If any justice or coroner shall offend in any thing contrary to the true intent and meaning of these provisions, the court, to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition, ought to have been delivered, shall, upon examination and proof of the offence, in a summary manner, set such fine upon every such justice or coroner as the court shall think meet."

Provisions to apply to all justices and coroners.

Sect. 6. "All these provisions relating to justices and coroners shall apply to the justices and coroners not only of counties at large, but also of all other jurisdictions."

Central Criminal Court.

By the 4 & 5 Will. IV. c. 36, s. 11, establishing the Central Criminal Court, justices and coroners acting within the limits of that act, are to take the like examinations, informations, bailments, and recognizance, and to certify the same to the justices of oyer and terminer and gaol delivery, as they are required by the above act of 7 Geo. IV.

How far these enactments alter the common law, &c.

We have before had occasion partially to notice these provisions, (*ante*, 406). The statute of 7 Geo. IV. wholly repeals the statutes 1 & 2 Ph. & M. c. 13, and 2 & 3 Ph. & M. c. 10. No variation is made by these provisions in the law as it previously stood, as it regarded the taking down the examinations of witnesses and the accused in cases of *felony;* but in cases of *misdemeanor* it is otherwise, the new law placing the examinations respecting them on the same footing as those in felony. By the old law, the justice was not, it seems, bound to take any examinations in writing in cases of *misdemeanor;* (*Rex* v. *Paine*, 1 *Salk.* 281; 1 *Ld. Raym.* 729; 5 *Mod.* 163, S. C.; and 1 *Burn, J.*, 24th ed. 1004, 5); though, indeed, the case of *Rex* v. *Fearshire*, 1 *Leach*, 202, is to the contrary, Lord *Mansfield*, C. J., saying in that case, that it was the indispensable duty of justices to take all charges in writing. Upon the hearing of a case of trespass under the Game Act, it seems it is not incumbent on the magistrate to take down in writing what is said before him; (*Robinson* v. *Vaughton*, 8 *C. & P.* 252); but it is advisable that he should do so in all cases.

Object of statutes.

One of the objects of the legislature in passing the above enactments was to enable the judge and jury before whom the prisoner is tried, to see whether the witnesses at the trial are consistent with the account given by them before the committing magistrate. (*Lambe's case*, 2 *Leach*, 552; *Lord Stafford's case*, 7 *How. St. Tr.* 1361). And where such written deposition of what has been stated by a witness before a magistrate on a charge of misdemeanor exists, it is the only admissible evidence; and this rule is not limited to the individual case, with the view to which the evidence was taken down, but extends to all subsequent proceedings, civil as well as criminal: and it is not requisite for this purpose that the depositions be signed by the witness. (*Leach* v. *Simpson*, 5 *Mee. & W.* 309).

Depositions, how to be taken.

In pursuance of the above enactments, the examination of the accused and witnesses must be taken down in writing. As much of such

examination as is material must be put down. What the accused says and the depositions used by the witnesses should be put down in the very words used by them, or as near as possible in those words, and not in any law technicalities, or words not made use of by them, or in the words of a clause in a statute under which the party is charged. (*See Mills* v. *Collett*, 3 *M. & P.* 242; 6 *Bing.* 85, S. C.; *Cohen* v. *Morgan*, 6 *D. & R.* 8; *Reg.* v. *Roche*, 1 *Car. & Marsh.* 341). The depositions should be taken in the first person; thus, "I saw &c. at such a time and place," instead of saying "he, this examinant," and "he, this deponent"—terms which many witnesses do not understand, and perhaps may conceive to mean some other person.

6. *Taking down in writing, &c.*

In what words.

We have seen (*ante*, 466) that the accused should not be put upon his oath; and if his examination, as taken down and signed by the magistrate, conclude, "taken and sworn before me," it is not receivable in evidence, and the judge will neither allow the magistrate's clerk to prove that in fact it was not sworn, nor will he receive parol evidence of what the prisoner said. (*R.* v. *Rivers*, 7 *C. & P.* 177; *R.* v. *Hornage*, 1 *Stark. Rep.* 242, *ante*, 466).

Accused should not be examined on oath.

The formal mode of taking down the deposition is usually as follows:—"The examination of A. B., of &c., taken on oath, &c." But if the original information and evidence taken before the warrant was issued contain a complete case, it is the practice, after re-swearing the accuser and witnesses, to read over their former depositions in their presence and that of the prisoner, and then to state to the latter that he is at liberty to ask the prosecutor and witnesses any questions respecting the charge against him; and, if he declines so doing, the examinations are not again gone over, but a fresh jurat is made to them; and this even before a fresh magistrate.

Formal parts

Where the examination was headed "the information and complaint" of A. B., *Gurney*, B., refused to receive it in evidence. (*R.* v. *Bentley*, 6 *C. & P.* 148).

The examination of the prisoner ought to be read over to him, and tendered to him for his signature. His signature, however, is not essentially necessary, but only for precaution and for the facility of future proof. In *Lambe's case*, (2 *Leach, C. C.* 625), it was held, that a written examination containing the prisoner's confession, taken by a committing magistrate, and read over to the prisoner, who admitted it to be true, but refused to sign it, would have been evidence at common law, and was not rendered inadmissible by any provision in stats. 1 & 2 and 2 & 3 Ph. & M. In this case the examination was rendered admissible by the prisoner acknowledging the truth of its contents; but if the prisoner had not made such admission, and had refused to sign it after it had been read over to him, it could not have been received in evidence. (*R.* v. *Telicote*, 1 *Stark. C. N. P.* 483; 1 *Phill. Evid.* 115, 7th ed.). Whether he be silent or not, it is best that the justice should put down in writing the facts exactly as they take place before him. See the form, *post*, 476, (No. 3).

Signature of accused.

The examinations of the witnesses should also be tendered to them for their signatures, and they should sign them; but this is not absolutely requisite. (1 *Leach*, 458; 2 *Leach*, 854; 1 *Chit. C. L.* 80). The stat. 7 Geo. IV. c. 64, ss. 2 & 3, requires the *magistrate* to sign them; but not the witnesses. (*Leach* v. *Simpson*, 5 *M. & W.* 309). He should attach his signature to each deposition separately. (*Reg.* v. *Osborne*, 8 *C. & P.* 110, 113).

Signatures of witnesses.

Justice's signature.

During the whole of the proceedings, it is prudent for the justice to have his clerk or other intelligent person present, in order that no difficulty might arise in proving the identity of the deposition in case of a refusal to subscribe it by a witness. (*Dick. J., Examination*, III.)

As to the proof of these examinations and depositions on a trial, see *ante*, 406.

Proof of.

8. *Remanding accused.*

VII. Obstructing the Examination, &c.

(7). Obstructing the examination.

From some authorities it seems that if any person obstructs the examination, or is guilty of any other contempt, by insulting the justice or otherwise, he may be committed by such justice to prison, and may be indicted; (*see R.* v. *Revel*, 1 *Stra.* 421; *Burdett* v. *Abbott*, 14 *East*, 85); but in *Pettit* v. *Addington*, (*Peake, C. N. P.* 62), Lord *Kenyon* doubted the justice's power to commit, as he was not sitting except as a *ministerial* officer. Such a commitment must be in writing, (*Mayhew* v. *Locke*, 2 *Marsh.* 374; 7 *Taunt.* 63, S. C.); and for a time certain, (*Rex* v. *James*, 5 *B. & Al.* 894; 1 *D. & R.* 559, S. C.); and not until he retract, or make a personal submission or apology. (*Burdett* v. *Abbott*, 14 *East*, 142).

Right of third persons to be present.

It may be as well to observe, that a prisoner, when examined before a justice on a charge of felony, is not entitled as of right to have a person skilled in the law, or any other, heard as an advocate on his behalf, it being a preliminary investigation only, and not conclusive on him; and the recent act of 6 & 7 Will. IV. c. 114, allowing a prisoner counsel, does not alter the law in this respect. As a matter of courtesy, however, the justice frequently allows it. (*Cox* v. *Coleridge*, 1 *B. & Cres.* 37; 2 *D. & R.* 86, S. C.; *Rex* v. *Borron*, 3 *B. & Al.* 432; *Daubney* v. *Cooper*, 10 *B. & Cres.* 237; *Collier* v. *Hicks*, 2 *B. & Adol.* 663. See more fully the 6 & 7 Will. IV. c. 114, tit. "*Conviction*," *Vol. I.*)

VIII. Remanding Accused for further Examination.

(8) Remanding accused for further examination.

The justice should take and complete the examination of all concerned, and discharge or commit the accused for trial as soon as the nature of the case will permit him; (*Fortes.* 142, 143); but he is in all cases allowed a reasonable time for this purpose before he makes his final decision.

Power to commit.

There can be no doubt a magistrate may commit for re-examination. (*Davis* v. *Capper*, 10 *B. & Cres.* 32). But the magistrate should take care that he commits for *re-examination*, and not for the purpose of extorting a confession, or the like.

Form of detainer.

If by some reasonable occasion, as the absence of a witness or the like, the justice cannot at the return of the warrant take the examination, he may by word of mouth command the constable or any other person to detain in custody the prisoner till the next day, and then to bring him before the justice for further examination. And this detainer is justifiable by the constable or any other person, without showing the particular cause for which he was to be examined, or any warrant in writing. (1 *Hale*, 585; 2 *Hale*, 120; *and see Davis* v. *Capper*, 10 *B. & Cres.* 32).

Time of detainer.

Where, however, the detainer is for a long time, there had better be a warrant, in writing, for that purpose. See form, *post*, 476, (No. 5).

The time of the detainer must be no longer than is necessary for such purpose; and the magistrate ought not arbitrarily to commit the party. (*Davis* v. *Capper*, 10 *B. & Cres.* 28; 5 *M. & R.* 53, S. C.) Where a magistrate, meeting in the street a constable bringing up a person who had been taken into custody for drunkenness, said, "Take the man back, I will see him to-morrow," *Patteson*, J., ruled that he was liable to an action for false imprisonment; that he should either have declined to hear the charge, or have directed the party to be taken before some other magistrate; but he had no right to remand him for twenty-four hours. (*Edwards* v. *Ferris*, 7 *C. & P.* 542). In *Scavage* v. *Tatcham*, it was holden that a party could not be detained sixteen days; and it

was there said that the space of three days is a reasonable time. (*Cro. Eliz.* 829; 2 *Hawk.* c. 16, s. 12, *and see the case of Kendal & Roe*, 12 *Howell's St. Tri.* 1376). But there is evidently no precise limitation of the time: all that is to be regarded is, whether the time be *reasonable.* The reasonableness of it is a mixed question of law and fact, depending on the circumstances of each case. (*Davis* v. *Capper*, *Scavage* v. *Tateham*, *supra*). In a case where the period for which a party had been committed for further examination appeared to the court to be too long, yet the jurors having, to the satisfaction of the judge at Nisi Prius, found that the detention was not excessive, a rule *nisi* for a new trial was refused. (*Cave* v. *Mountain*, 1 *M. & G.* 257; 1 *Scott*, *N. R.* 132). In the practice of the best-regulated police-offices, there are many instances of prisoners being detained much more than twenty days, between their first being brought before a justice and their commitment for trial, and being brought up for examination several different days during the interval. (*Dick. J.*, *Examination; Arbuckle* v. *Taylor*, 3 *Dow*, 184; *Davis* v. *Capper*, 10 *B. & Cres.* 28; 5 *M. & R.* 53, S. C.; *Rex* v. *Gooding*, 1 *Burn, J.*, 24th ed. 1001, *n.*) (*a*).

8. *Remanding accused.*

If the examination do not take place in a reasonable time, an action will lie against the justice: the commitment would be void *ab initio.* (*Arbuckle* v. *Taylor*, 3 *Dow's Rep.* 184). In the case of *Davis* v. *Capper*, (10 *B. & Cres.* 28; 5 *M. & R.* 53, S. C.), it was fully settled that trespass would lie against a magistrate for committing a party charged

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(*a*) Mr. Justice *Park*, in his charge to the grand jury at Monmouth summer assizes, 1823, said, "You are here assembled as grand jurors, though many of you are magistrates, and through you I must address what I am about to say to magistrates in general. There has been a great irregularity in the commitment of the man in the borough gaol charged with horse-stealing. It is the duty of those who administer justice never to neglect the petitions of the poor; and I received a letter purporting to be signed by this prisoner, stating and complaining that he had been committed on the 27th of May last for further examination, that he never had been further examined, and that he never had been, up to that time (the 25th July), committed for trial! I took for granted it was like many of those letters which persons in my situation often receive; but when the calendar was presented to me on Tuesday morning, at Hereford, I then found he was, on the 30th July, committed for trial; a period of two calendar months and three days after he was first examined! I received from a magistrate of the borough, this morning, an account of various proceedings, and probably satisfactory reasons could be given for this delay, and it is not to find fault with this that I mention it. I do it as a matter of caution to all magistrates, and to state what I conceive to be the law on the subject. That a magistrate may commit for further examination there can be no doubt, because it is not always that the witnesses can be brought forward in the first instance, or the matter may not be ripe for trial; but the further and absolute commitment must be in a reasonable time. What is a reasonable time is a mixed question of law and fact, which those who are to exercise a judgment upon it must decide at the time; but, generally speaking, and without exception almost, two whole months cannot be a reasonable time. A magistrate ought as speedily as possible to make all inquiry. I state that with the greatest confidence, because I can state it on the authority of the twelve judges of England; for a case was submitted to us about two years ago, by H. M.'s command, in which that point incidentally came under consideration; and the judges were of opinion, that a further commitment could only be for a *reasonable* time, and that the jury must have found the commitment to be only for a reasonable time, otherwise the man would have been acquitted. It is distressing to see in the calendar of so respectable a county a commitment of this description, and that a man committed on the 27th of May, 1823, for further examination, should not have been further examined until the 30th of July following." (1 *Burn, J.* 24th ed. 1008; and see Mr. *Justice Bailey's judgment in Davis* v. *Capper*, 10 *B. & Cres.* 33).

9. *Discharging accused.*

with felony for re-examination for an unreasonable time, though without any improper motive.

It also appears, that a warrant for commitment for an unreasonable time is wholly void.

Place of detention.

It has been said that the magistrate ought not to detain him in prison in his own house, but should send him to the common gaol of the county; for otherwise, when the justices come to deliver the gaol, he is not in the gaol, and may not be delivered, and so shall lie longer than is reasonable. (*Scavage* v. *Tateham*, *Cro. Eliz.* 830). But, according to other authorities, because it may be unseasonable to take the information and examinations presently, or possibly it may take longer time, the prisoner may be continued in the custody of the officer, or may be detained in the justice's house, or committed to some near safe place of custody till the final examinations can be completed. (2 *Hale*, 120; 1 *Hale*, 585; *Broughton* v. *Mulshoe*, 408; 1 *Chit. C. L.* 74; *Davis* v. *Capper*, 10 *B. & Cres.* 32; 5 *M. & R.* 53, S. C.)

Nature and effect of commitments for further examination.

It would be as well further to observe, that commitments for further examination stand upon grounds and principles different from commitments for custody in order for trial, which we have already noticed, tit. "*Commitment for safe Custody*," *Vol. I.* (*See* 3 *Dow's Rep.* 183). "A commitment for further examination is not a proceeding *against* the party, but a proceeding for his benefit. It is a proceeding with a view to protect him against a commitment for trial, if, during a reasonable time for examination, it can be found there is no ground upon which there ought to be a commitment for custody in order to trial. And if you were to say, that where a party is committed for further examination bail shall be required before that further examination takes place, you put him to this inconvenience, that he must give security to stand a trial which he may never have to stand."—*Per Lord Eldon*, C., (3 *Dow*, 183, 184). A commitment for further examination must not be made use of as a commitment for custody in order to trial. (*Id.*)

IX. Discharging Accused.

(9). When magistrate may discharge accused.

If he be charged *with suspicion* only of felony, yet if there be no felony at all proved to be committed, or if the fact charged as a felony be in truth no felony in point of law, the justice of peace may discharge him; as, if a man be charged with felony for stealing of a parcel of the freehold, or for carrying away what was delivered him, and such like, for which, though there may be cause to bind him over for a trespass, the justice may discharge him as to felony, because it is not felony. (2 *Hale*, 121; *Pult.* 146 b).

When he must bail or commit.

But if there be an *express charge of felony*, on oath, against the prisoner, though his guilt appear doubtful, the justice cannot wholly discharge him, but must bail or commit him; and it is said, that if a person be killed by another, though it be *per infortunium* or even *se defendendo*, which is not properly felony, yet the justice ought not to discharge him, for he must undergo his trial, and therefore must be sent to prison, or admitted to bail. (2 *Hale*, 121; 1 *Hawk.* c. 29; 2 *Id.* c. 15; *Dalt. J.*, 164; *sed vide Dick. J.*, *Commitment*, II. n. *a*). And, in modern practice, though exculpatory evidence is received at the instance of the prisoner, and certified with the other depositions, unless it appears in the clearest manner that the charge is malicious, as well as groundless, it is not usual for the magistrate to discharge him, even when he believes him to be altogether innocent. (1 *Chit. C. L.* 89).

The same observations will, for the most part, apply as to discharging a party accused of misdemeanor.

X. Bailing or Committing him.

As to bailing or committing the accused, *see* "*Bail*," *Vol. I.*; "*Commitment for safe Custody*," *Vol. I.*

(10). Bailing or committing accused.

XI. Binding the Parties to Prosecute and give Evidence.

11. *Recognizance to prosecute.*

(11). Recognizance to prosecute and give evidence.

When the justice has decided upon bailing or committing the accused, he should take the recognizance of the prosecutor to prosecute, as also the recognizance of the material witnesses to appear against the party accused at the next court of oyer and terminer or gaol delivery, or superior criminal court of a county palatine, or great sessions, or sessions of the peace, as the case may require. (*Dalt. J.*, 164). The words of the 7 Geo. IV. c 64, ss. 2 & 3, *ante*, 468, expressly give the justice power to do so. If more than one are to be bound to prosecute, the recognizances should not be taken separately. And it is no answer to an action for a malicious prosecution that the prosecutor preferred the indictment unwillingly, and solely because he was bound to prosecute, if it appear that he was himself the cause of his being bound over by originally making a malicious charge before the justice. (*Dubois* v. *Keates*, 11 *Ad. & Ell.* 329). The magistrate cannot compel the prosecutor or witness to find sureties for his performance of the condition of the recognizance.

Infants and married women.

Infants and married women, who cannot legally bind themselves, must procure others to be bound for them. Infancy, however, is no ground for discharging a forfeited recognizance to appear and prosecute for a felony. (13 *Price*, 673).

Refusing to give evidence.

If the prosecutor or witness refuse to give such recognizance, the magistrate has power to commit him, this being virtually included in his commission, and by necessary consequence upon the above-mentioned statute 7 Geo. IV. c. 64, ss. 2 & 3. (*Bennett* v. *Watson*, 3 *M. & Sel.* 1; 1 *Hale*, 586; 2 *Hale*, 121, 282; 2 *Hawk.* c. 8, s. 58; and *Cropper* v. *Horton*, 4 *D. & R. M. C.* 42; 8 *D. & R.* 166, S. C.; *ante*, 465). This doctrine was confirmed in a case, where a married woman refused to enter into a recognizance for her appearance at sessions to give evidence against a felon, and the magistrate committed her, and the court held, that the commitment was legal. (*Bennett* v. *Watson*, 3 *M. & Sel.* 1; *ante*, 466). But a justice of the peace is not authorized by law to commit a witness willing to enter into a recognizance for his appearance, to give evidence against an offender, merely because such witness is unable to find a surety to join him in such recognizance; nor ought the justice to require such surety: the party's own recognizance (at the peril of commitment) is all that ought to be required. (*Per Graham*, B., *Bodmin Summer Assizes*, 1817; 1 *Burn, J.*, 24th ed. 1013). The justice has no authority to commit a witness for not finding sureties for his appearance.

Form and effect of recognizance.

The party himself need not sign either of these recognizances. (*Dalt. J.*, c. 176; *Dick. Sess.* 87).

The recognizance is an obligation of record, as soon as it is taken and acknowledged, although not made up by the justice, and only entered in his book. (*Dalt. J.*, c. 168; *see* tit. "*Recognizance*," *Vol. V.*)

The recognizance is afterwards drawn up on parchment, and subscribed by the justice before whom it is taken. The 7 Geo. IV. c. 64, ss. 2 & 3, *ante*, 468, requires such subscription by the justice.

Estreating, &c. of.

As to estreating the recognizances, *see* tit. "*Fines*," *&c.*, *post*.

12. *How examinations to be kept, &c.*

XII. How Examinations, &c. to be kept, and Right of Party to Copies.

(12). How examinations, &c. to be kept.

The justice should take due care over the examinations, information, and recognizances, until they be delivered over to the proper officer, in pursuance of the 7 Geo. IV. c. 64, ss. 2 & 3, *ante*, 468.

In an action for maliciously and without probable cause charging plaintiff with an assault before a magistrate, the magistrate proved that the depositions taken before him were reduced into writing, and that he delivered them at the Court of Quarter Sessions to the clerk of the peace, or his deputy. The clerk of the peace stated that a bill of indictment for the assault was preferred, that the grand jury returned *ignoramus*, and that it was usual in such a case to throw away or destroy the depositions; that he had searched among his papers and could not find them: it was held that parol evidence of their contents was admissible, and that it was not necessary to call the deputy or clerk of the peace to show that the original depositions were not in his possession, as it was his duty, if he had received them, to have delivered them to his principal, and not being in his custody, it was to be presumed they were lost or destroyed. (*Freeman* v. *Arkell*, 2 *B. & Cres.* 494; 3 *D. & R.* 669; 1 *C. & P.* 135, 326, S. C.)

Right of party to copy of.

Before the recent act of 6 & 7 Will. IV. c. 114, it was discretionary for the justices to let any one, not properly authorized, see them: even the party accused had no right to demand a copy of the depositions, though in cases of treason or felony he must have been put in possession of a list containing the names of the witnesses. (*Rex* v. *Holland*, 4 *T. R.* 691; 1 *Phill. Ev.* 7th ed. 427, 8).

Copies of depositions to be allowed to prisoners.

But this right of withdrawing such copies from the *party accused*, when *held to bail* or *committed to prison*, is put an end to by that act, by sect. 3, of which it is enacted, that "All persons who after the act shall be held to bail or committed to prison for any offence against the law shall be entitled to require and have, on demand, (from the person who shall have the lawful custody thereof, and who is hereby required to deliver the same), copies of the examination of the witnesses respectively upon whose depositions they have been so held to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding three halfpence for each folio of ninety words: provided always, that if such demand shall not be made before the day appointed for the commencement of the assize or sessions at which the trial of the person on whose behalf such demand shall be made is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the judge or other person to preside at such trial shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial; but it shall nevertheless be competent for such judge or other person so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged."

Proviso.

Prisoners entitled to inspect depositions on trial.

Sect. 4. "That all persons under trial shall be entitled, at the time of their trial, to inspect, without fee or reward, all depositions (or copies thereof) which have been taken against them, and returned into the court before which such trial shall be had."

A prisoner is not entitled under this act to a copy of his own statement returned by the magistrate, as made before him, but only to a copy of the depositions of the witnesses against him. (*Reg.* v. *Aylett*, 8 *Car. & P.* 669).

Compelling parties to produce depositions.

Before the 6 & 7 Will. IV. c. 114, it was considered that a *mandamus* would not lie to compel a magistrate to produce depositions taken before him on a charge of felony, for the purpose of founding an in-

dictment for perjury against the deponents: and that the magistrate must be subpœnaed to produce the depositions, which might be read in evidence before the grand jury. (*In Re One of the justices for the county of Bedford*, 1 *Chit. Rep.* 627). 14. *Forms.*

But in the case of *Rex* v. *Smith*, (1 *Stra.* 126), a rule was granted, after time had been taken to deliberate, to compel a justice of the peace to cause an examination taken before him to be produced at the *trial*, and to give the party a copy in the mean time. And in *Welch* v. *Richards*, (*Barnes*, 468), in an action for a malicious prosecution, a rule was obtained for the committing magistrate to show cause why he should not permit the plaintiff to inspect and take a copy of the information at his own expense, and cause the original information to be produced at the trial; and after cause shown, the rule was made absolute on the authority of the case of *Rex* v. *Smith*.

And where the plaintiff, in an action on a deed, has had the same taken from him under a warrant against him for a felony, the court will, on an affidavit of demand upon the magistrate and constable, direct them to give plaintiff a copy to declare on, and to produce the deed on the trial, the plaintiff undertaking to pay the expenses. (*Harris* v. *Aldrit*, 2 *Chit. Rep.* 229).

XIII. Certifying the Examinations.

The 7 Geo. IV. c. 64, ss. 2 & 3, *ante*, 468, requires the justice to subscribe the examinations, information, and recognizances, and deliver, or cause to be delivered, the same to the proper officer of the court in which the trial is to be, before or at the opening of the court. (13). Certifying examinations, &c.

By the 4 & 5 Will. IV. c. 86, s. 11, justices acting within the limits of the Central Criminal Court are to certify examinations, &c., to the justices of oyer and terminer and gaol delivery, as they are required by the 7 Geo. IV.

Formerly the justices used personally to attend with the informations, in order to certify them; but now they are handed over by the clerk of the justices to the clerk of the peace or assizes. It is, however, desirable, in a case affecting the life of a party, that the justice should be called to prove the correctness of what he took down. (*Reg.* v. *Pikesley*, 9 *C. & P.* 124.)

Every one of the depositions that have been made at all the examinations that have taken place respecting the offence which is to be the subject of a trial, and all that was said by the witnesses, which was at all relevant to the charge, ought to be returned. (*Rex* v. *Simons*, 6 *C. & P.* 540; *Rex* v. *Coveney*, 7 *C. & P.* 667; *Rex* v. *Thomas*, *Ib.* 817; *Rex* v. *Grady*, *Ib.* 650). But nothing should be returned as a deposition unless the prisoner had an opportunity of knowing what was said, and of cross-examining the deponent. (*Reg.* v. *Arnold*, 8 *C. & P.* 621).

The magistrate is bound to return not only the depositions of witnesses, but also any confession taken down as made by the prisoner; and it is no excuse for not doing so, that the confession was wanted to be sent before the grand jury. (*Rex* v. *Fallows*, 5 *C. & P.* 508).

As to the proof of the examinations at the trial, see *ante*, 406.

XIV. Forms.

"*You shalt true answer make to all such questions as shall be demanded of you; so help you God.*" (1). General form of oath to be administered to witnesses (*ante*, 464).

———, *to wit. The examination of C. D., of* , *labourer, taken on oath, this day of , in the year of our Lord* (2). Deposition of a witness.

14. *Forms.*

before me, J. P., one of [or "*us*," *&c.*] *her Majesty's justices of the peace in and for the county aforesaid, in the presence and hearing of A. B., charged this day before me* [or "*us*"] *the said justice , for that he the said A. B., on &c., at &c.*, [describing the offence generally, as in a warrant or commitment. See the various titles of offences].

Which said C. D. saith as follows: I saw, &c. [stating the deposition of the witness, as nearly as possible in the very words he uses. See *ante*, 469. Then let him subscribe his name to the deposition, if he will do so; but such subscription is not absolutely requisite. *Ante*, 469].

Taken before me [or "*us*"], *the day and year above mentioned.*

J. P.

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(3). Examination of accused.

———, *to wit. The examination of A. B., of , labourer, taken this day of in the year of our Lord , before me, J. P., esquire, one of* [or "*us*," *&c.*] *her Majesty's justices of the peace in and for the county aforesaid:*

The said A. B. being charged before me [or "*us*"] *the said justice , on the oath of C. D., of &c., for tha the the said A. B., on &c., at &c.*, [describing the offence generally, as in a warrant or commitment]: *Upon his examination now taken before me, saith, &c.* [stating what the accused says, as nearly as possible in the very words he uses].

[If the accused be silent, or declines saying any thing in his behalf, the examination, after stating the offence with which the party is charged, as above, should proceed thus]: "*And the witnesses against the said A. B. being examined in his presence, the said A. B. is now asked by me if he wish to say any thing in his own behalf; whereupon the said A. B.* [*answereth nothing, or*] *saith,*" [stating what the accused may say, as nearly as possible in the very words he uses. Get him to sign the examination, if he will do so, *ante*, 469].

Taken before me [or "*us*"], *the day and year above mentioned.*

J. P.

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(4). Summons of a witness, (see *ante*, 465).

———. *To the constable of*

Whereas information hath been made before me, J. P., esquire, one of her Majesty's justices of the peace for the said county, that A. D., late of , in the county aforesaid, on &c., at &c., [describing the offence generally, as in a warrant or commitment]: *and that C. D., of &c., is a material witness to be examined concerning the same; These are therefore to require you to summon the said C. D. to appear before me, at in the said county, on the day of at the hour of in the noon of the same day, to testify his knowledge concerning the premises. Herein fail you not. Given under my hand and seal, the day of in the year of our Lord*

J. P.

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(5). Commitment for further examination, (see *ante*, 470).

———, *J. P., esquire, one of her Majesty's justices of the peace for the said county, to the constable of in the said county, and to the keeper of the* [*common gaol*] *at in the said county:*

These are to command you the said constable, in her said Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of A. B., charged this day before me, the said justice, on the oath of C. D., on suspicion that he the said A. B., on &c., at &c., [describing the offence generally, as in the warrant for apprehension]: *but inasmuch as E. F., a material and necessary witness against the said A. B., resides at , a distance of miles from the said dwelling-house of the said C. D.*, [or as the case may be], *and he the said C. D. hath not been able to procure the attendance of the said E. F., but will use his best endeavour to do so on the day of instant; you the said keeper are hereby required to receive the said A. B. into your custody in the said common gaol until next, the day of instant, when you are hereby required to bring the said A. B. before me at in the said county, or before such others of her Majesty's justices of the peace for the said county as shall be then and there present, to be re-examined and further dealt with according to law. Herein fail you not. Given under my hand and seal, the day of , in the year of our Lord*

J. P.

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14. *Forms.*

(6). Recognizance to prefer a bill of indictment, and give evidence.

County of } *Be it remembered, that on the day of in the year*
——— } *of the reign of , A. I., of , in the said county, yeoman, per-*
to wit. } *sonally came before me, H. C., doctor of laws, one of the justices of our said Lady the Queen, assigned to keep the peace in and for the said county, and acknowledged himself to owe to our said Lady the Queen the sum of of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if he the said A. I shall fail in the condition indorsed. H. C.*

The condition of the within-written recognizance is such, that whereas one A. O., late of , was this present day brought before the justice within-mentioned by the within-bounden A. I., and was by him charged with [the felonious taking and carrying away the goods of him the said A. I.], and thereupon was committed by the said justice to the common gaol in and for the said county; if, therefore, he the said A. I. shall and do, at the next [general] quarter sessions of the peace, [or, *gaol delivery*], *to be holden in and for the said county, prefer, or cause to be preferred, one bill of indictment of the said [felony] against the said A. C., and shall then also give evidence there concerning the same, as well to the jurors that shall then inquire of the said [felony], as also to them that shall pass upon the trial of the said A. O., that then the said recognizance to be void, or else to stand in full force for the Queen.*

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(7) Recognizance to give evidence.

County of } *Be it remembered, that on the day of , in the year*
——— } *of the reign of , A. W., of , in the said county, yeoman, did*
to wit. } *come before me, H. C., doctor of laws, one of the justices of our said Lady the Queen, assigned to keep the peace in and for the said county, and did acknowledge himself to owe to our said Lady the Queen the sum of [ten] pounds of lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if he the said A. W. shall fail in the condition hereon indorsed* [or, "*under-written*," as the case may be].

The condition of the within-written [or, *above-written*] *recognizance is such, that if the within* [or "*above*"] *bounden A. W. shall personally appear at the next [general] quarter sessions of the peace* [or, *gaol delivery*], *to be holden at in and for the said county, and then and there give such evidence as he knoweth, upon a bill of indictment to be exhibited by A. I., of &c.,* [*yeoman*], *to the grand jury, against A. O., late of &c.,* [*labourer*], *for [feloniously stealing, &c., the property of the said A. I.]; and in case the said bill be found a true bill, then, if the said A. W. shall then and there give evidence to the jurors that shall pass on the trial of the said A. O., upon the said bill of indictment, and not depart thence without leave of the court, then this recognizance to be void, or else remain in its full force.*

Exceptions, *Bill of, see ante,* 462. *Statement of, in Information and Conviction, see "Conviction, Vol. I. Statement of, in Indictment, see "Indictment," Vol. III. Proof of, see ante,* 359.

Exchequer Bills, *see "Larceny," "Forgery," Vol. III.*

Excise and Customs (a).

Customs and Excise defined.

As two sources of *revenue* far more productive than any other, and as very materially affecting foreign as well as inland commerce, the laws and regulations relating to the duties of Customs and Excise are entitled to the first and principal attention of every legislator, with a view to the introduction of judicious regulations, and of *all* lawyers, and particularly of *justices of the peace*, the latter as having important duties and powers of enforcing regulations affecting Customs and Excise.

The *Customs* are duties payable on merchandize *brought into* or *carried out* of the country, or *coastwise*. The *Excise* duties, on the other hand, are an *inland* imposition, and are imposed sometimes on the manufacturer or dealer, sometimes on the commodity itself, or the retail sale.

The *Custom* duties, which are paid on the first introduction of goods *into* the country, are liable to objection on that very account, as the merchant is obliged to charge in the price of the commodity, not only the tax itself, but also a commercial profit beyond the mere interest on such tax, and the advance of his money in paying the same; and when the goods have to pass through the hands of several dealers, the accumulated profits on the tax may exceed the amount of the tax itself (b).

The *Excise* duties fall more lightly on the consumer than Custom duties to the same amount, because they are generally paid in a much later stage. The expense of collecting them is also easier: but the *frauds* to which this branch of the revenue is exposed, have occasioned it to be protected by provisions which some have considered too rigorous and inquisitorial for the temper of a free nation. The frauds that might be committed, unless a strict watch was kept, have made it necessary to give the Excise-officers a power to *enter and search* the houses of persons who deal in exciseable commodities, at any hour of the day, and, in many cases, of the night; and the proceedings for a transgression against the law are so summary and expeditious, that a person may be convicted within a very short time in a very large penalty, by two commissioners or justices of the peace, to the total exclusion of the trial by jury, and disregard of the common law. The regulations of the Excise, however, are not without advantages ulterior to the production of revenue, inasmuch as they are the means of preserving some species of goods from adulteration, which might be highly prejudicial to the health of the community. The imposition of heavy duties on articles which may be called the *necessaries of life*, as on salt, leather, soap, and candles, or on manufactured goods, is liable to objection on account of the influence

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(a) These subjects have been considered together, because the laws of the Customs and Excise, so far as justices, constables, and other peace officers are concerned, are in some measure connected and interwoven with each other; and though perhaps a better arrangement might have been adopted, it is thought better to adhere to the old plan.

For the *history* and *particulars* of the laws of the Customs and Excise antecedent to the 6 Geo. IV. c. 105, which repealed the previous law, and for the decisions thereon, many of which are applicable to the existing law, see 1 *Chitty's Commercial Law*, 690 to 847; *Tucker on Trade*, 38; 2 *Sinclair on Revenue*, 358 to 411; 3 *Smith's Wealth of Nations*, b. 5, s. 2, p. 347; 1 *Bla. Com.* 313 to 320; *Highmore on Excise, Vol. I.; Pope's Laws of Customs and Excise; Bac. Ab. Smuggling, A.; Com. Dig. Trade; Paley on Convictions, 2nd ed.*

(b) *Tucker on Trade*, 38, 124. But the method of bonding and warehousing goods has, in a great measure, removed this objection.

Definition.

of such a measure in depressing trade and industry, and the interest of manufacturers seems also to require that the *importation* of foreign *raw* materials should be preserved, as much as possible, unencumbered with duty (*a*). The duties on *importation* constitute, at the present day, the principal branch of those that are levied under the name of Customs, and the goods which are charged with duties on *exportation* are comparatively few (*b*). Formerly, indeed, duties were imposed on the *exportation* of almost every commodity, under an idea that such duties were not paid by the natives, but by the foreign merchant: but this opinion is now exploded. Experience has proved that foreign nations will not give beyond a certain price for any commodity, and that by excessively taxing goods exported, we should either force them to give up the consumption, or to trade with other places for a supply (*c*). The duties on goods carried *coastwise* are imposed principally on three commodities; namely, coals, slate, and stone. Indeed, it is one of the principal advantages of the uniform system of taxation, which, with a few exceptions of no great consequence, takes place in all the different parts of the United Kingdom, that it leaves the *interior* commerce of the country, the *inland and coasting trade*, almost entirely free. The *inland trade* is almost perfectly free, and the greater part of goods may be conveyed from one end of the kingdom to the other without having occasion for a permit or licence, and without being subject to any question, visit, or examination, from the revenue officers. There are a few exceptions, but they are such as can give no interruption to any important branch of the inland commerce of the country. *Goods carried coastwise*, indeed, in general, require certificates or coast cockets. But, except coals, slate, and stone, such goods are in general duty free. This freedom of *interior* commerce, which is the effect of the uniformity of the system of taxation, is highly important in its influence on the prosperity of the kingdom, as every great country is necessarily the best and most extensive market for the greater part of the productions of its own industry (*d*).

It will be obvious that the systems of these two modes of taxation cannot in all respects be *permanent* and *unchanging*, at least, in particulars, for one branch of commerce will frequently change and become more profitable than others, and will, therefore, better than others, bear increase of taxation or charge; and as regards *regulations*, there will constantly be new contrivances to elude the payment of duties, which will consequently, after a lapse of a few years, necessarily require new remedies to counteract and defeat such frauds. Hence we find, that in general, every fourth or fifth year, it has become the practice to repeal all the existing *duties* and *regulations*, and then to enact new duties and provisions respecting them (*e*).

We will now proceed to consider so much of the laws affecting the Customs and Excise as practically interest the public in general, *and justices of the peace and inferior peace officers in particular*, under the two following heads and appropriate subdivisions, *viz.*:—

I. Of the Customs.

II. Of the Excise.

(*a*) See *Tucker on Trade*, 38; 2 *Sinclair on the Revenue*, 358 to 411; 3 *Smith's Wealth of Nations*, b. 5, c. 2, p. 347, &c.; 1 *Bla. Com.* 313 to 320; *Highmore on Excise, Vol. I.*; *Preliminary Observations on Revenue.*

(*b*) See 5 & 6 Vict. c. 47, Sched. B.

(*c*) 2 *Sincl.* 360; and see as to coals carried coastwise, 2 *Sincl.* 361; *Smith's Wealth of Nations*, b. 5, c. 2; *Highmore on Excise, Introduction.*

(*d*) *Smith's Wealth of Nations*, b. 4, c. 5; 2 *Sinclair*, 361.

(*e*) A general revision of the customs' duties has been lately accomplished through the medium of the new Tariff, contained in the 5 & 6 Vict. c. 47.

I. Of the Customs.

The *ancient* acts relating to the Customs, with the observations and decisions upon them, will be found in 1 Chitty's Commercial Law, 690 to 847. Before the year 1787, the *multiplicity* of enactments relative to the Customs created great intricacy and difficulty; and induced Mr. Pitt to introduce, in that year, the Customs Consolidation Act, (27 Geo. III. c. 13), followed by several acts. At length the present admirable *system* of legislation was introduced, under the care of Mr. Herries, and all prior enactments were repealed, by 6 Geo. IV. c. 105, and 7 Geo. IV. c. 48, s. 52; and *several* acts, *viz.* 6 Geo. IV. c. 106 to c. 116, both inclusive, were enacted. These, prepared under the care and correction of Mr. Herries, and the several acts of the subsequent sessions, having also become complex, and new enactments being requisite, on 28th August, A.D. 1833, it was deemed necessary to repeal them, (by 3 & 4 Will. IV. c. 50), and by several following enactments of the same session (*a*), to *consolidate* and amend their substance, and to introduce some few changes, consisting principally of *reductions* of duties and easements of restrictions (*b*). So that the practice and decisions on the prior acts will still, in general, apply. The course pursued by Parliament in legislating for the *Customs*, since the consolidation of A.D. 1833, has been, in each succeeding session, to embrace, as far as possible, in an annual act, under the title of "*An Act to amend the laws relating to the Customs,*" all the new measures of the session upon that branch of law.

In preparing this edition for the press, the order of enactment in the several statutes of 1833 has been adhered to, for although considerable alterations have taken place in this branch of the law since that period, by the subsequent annual acts, and especially by the recent statute of the 5 & 6 Vict., c. 47, no general *consolidating* act has been passed.

Taking therefore the statutes passed in the 3rd and 4th years of William IV. as the ground work of our present treatise, the respective alterations and amendments will be inserted in their proper places. It may also be sufficient here to state generally, that the recent statute of Victoria respecting the Tariff has reduced the amount, and greatly simplified the arrangement of the Customs' duties in many instances, but without making any material alteration in the acts under which they are collected.

We will now proceed to consider this subject in the following order:—

Division of the subject.

I. *The Management of the Customs,* 481.

II. *The Regulation of,* 494.

III. *The Prevention and Punishment of Smuggling, &c.,* 536.

IV. *The Present Duties of Customs,* 570.

V. *The Practice and Proceedings before Justices, &c.,* 599.

(*a*) Prepared under the care and direction of the late Lord Sydenham, then Mr. Poulett Thomson, Vice-President of the Board of Trade.

(*b*) See observations on *Hume's Customs Laws,* Introd. page vi.; and see recital in 3 & 4 Will. IV. c. 5.

I. Management of the Customs.

[3 & 4 Will. IV. c. 51 : 3 & 4 Will. IV. c. 52 : 5 & 6 Vict. c. 47, s. 2.]

(1). Management of the customs.

3 & 4 Will. 4, c. 51.

On the same day, [28th Aug. 1833], that all subsisting acts relative to the Customs were repealed by the 3 & 4 Will. IV. c. 50, the 3 & 4 Will. IV. c. 51 received the royal assent. Now, although the new enactments in this latter statute are not directly connected with the office of justice of the peace or parochial officers, (excepting the 37th & 40th sections relating to the forced sale of buildings and land for the purposes of Customs), still, for the better understanding of the duties imposed upon those officers by the legislature, it has been considered advisable to enter more fully into the subject. The enactments relating to the *Management* of the Customs may be arranged under the following heads:

The Commissioners and other Officers, 481.
The Receiver General, 484.
The administering Oaths, 487.
Of Lands and Buildings for the Customs, 487.
Of the Signatures of the Lords of the Treasury, 494.

3 & 4 Will. 4, c. 51 (a).

The stat. 3 & 4 Will. IV. c. 51, intituled, "An Act for the Management of the Customs," after reciting (*a*), that by 6 Geo. IV. c. 106, the laws in relation to the management of the Customs were consolidated and amended; and that, since the passing of that act, divers acts for the further amendment of the law have been found necessary, and that it would be of advantage to the trade and commerce of the country that the said acts should be consolidated into one act, enacts, "that this act shall commence upon the 1st Sept. 1833, except where any other commencement is herein particularly directed."

Commencement of act.

Officers.

Board of Customs appointed by treasury.

Sect. 2. "That it shall be lawful for His Majesty from time to time to appoint, under the great seal of the United Kingdom, any number of persons, not exceeding thirteen, to be commissioners of his Majesty's Customs for the collection and for the management of the Customs in and throughout the whole of the United Kingdom, and of any of his Majesty's possessions abroad; and that each of such commissioners, when so appointed, shall have and hold his office during his Majesty's pleasure."

Commissioners subject to control of the treasury.

Sect. 3. "That the said commissioners so appointed or to be appointed by his Majesty shall, in all matters and things relating to the execution of their duties, be subject to the authority, directions, and control of the commissioners of his Majesty's treasury, and shall obey such orders and instructions as shall from time to time be issued to them by the said commissioners of his Majesty's treasury, under the hands of three or more of them."

Orders under hands of commissioners.

Sect. 4. "That every order, document, instrument, or writing, not being for the payment of money, required by any law at any time in force to be under the hands or under the hands and seals of the commissioners of his Majesty's Customs, being attested by the hands or the hands and seals of *two* (*b*) or more of such commissioners. And every such order for the payment of money being attested by the signatures of three or more of such commissioners, shall be deemed to be an order, document, instrument, or writing, under the hands or under the hands and seals, as the case may be, of the commissioners of his Majesty's Customs accordingly."

(*a*) By 5 & 6 Vict. c. 47, s. 2, this act shall be registered in the royal court of Jersey, although Jersey is not specially named in it.

(*b*) *See Ex parte White* v. *Gibbs*, 1 *Dowl. & Ryl.* 151.

Officers.

3 & 4 Will. 4, c. 51.

Previous appointments to remain in force.

Sect. 5. "That any appointment of commissioners of his Majesty's Customs in force at the time of the commencement of this act, shall continue in force, as if the same had been afterwards made under and by virtue of the authority of this act."

Appointment of necessary officers of Customs (*a*).

Salaries, allowances, and securities.

Sect. 6. "That it shall be lawful for the said commissioners of his Majesty's treasury, or for the commissioners of his Majesty's Customs under the authority of the said commissioners of his Majesty's treasury, to appoint proper persons to execute the duties of the several offices necessary to the due management and collection of the Customs and all matters connected therewith, under the control and direction of the commissioners of his Majesty's Customs, granting or allowing to such persons such salaries or other allowances, or permitting such emoluments, for the labour and responsibility in executing the duties of their respective offices or employments, and requiring of such persons such securities for their good conduct therein, as the said commissioners of his Majesty's treasury shall deem to be reasonable and necessary; and such persons shall hold their offices during the will and pleasure of the said commissioners of his Majesty's treasury, or of the commissioners of his Majesty's Customs, in such cases and in such manner as the said commissioners of his Majesty's treasury shall direct."

Persons employed by Customs deemed officers for such service.

Duties of officers, performed by persons and at places appointed by commissioners.

Sect. 7. "That every person employed on any duty or service relating to the Customs, by the orders or with the concurrence of the commissioners of his Majesty's Customs, (whether previously or subsequently expressed), shall be deemed to be the officer of the Customs for that duty or service; and that every act, matter, or thing required by any law at any time in force to be done or performed by, to, or with any particular officer nominated in such law for such purpose, being done or performed by, to, or with any person appointed by the commissioners of his Majesty's Customs, to act for or in behalf of such particular officer, the same shall be deemed to be done or performed by, to, or with such particular officer; and that every act, matter, or thing required by any law at any time in force, to be done or performed at any particular place within any port, being done or performed at any place within such port appointed by the commissioners of his Majesty's Customs for such purpose, the same shall be deemed to be done or performed at the particular place so required by law" (*b*).

Officers taking any fee or reward not allowed shall be dismissed.

Penalty 100*l.* for offering fee.

Sect. 8. "That if any officer, clerk, or other person acting in any office or employment in or belonging to the Customs, under the control and direction of the commissioners of the Customs, in any part of his Majesty's dominions, shall take or receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any other sort or description whatever, directly or indirectly, from any person, (not being a person duly appointed to some office in the Customs), on account of any thing done or to be done by him in or in any way relating to his said office or employment, except such as he shall receive under any order or permission of the said commissioners of his Majesty's treasury, every such officer so offending shall, on proof thereof to the commissioners of his Majesty's Customs, be dismissed from his office; and if any person (not being a person duly appointed to some office in the Customs) shall give, offer, or promise to give any such fee, perquisite, gratuity, or reward, such person shall for every such offence forfeit the sum of one hundred pounds (*c*): provided always, that it shall be lawful for the receiver of

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(*a*) A person employed under this and the following section, whose business it was to collect the duty on goods for which an entry tendered, and on payment of the duty to sign a bill as a receipt, fills a ministerial office: he is an officer of the Crown, not of the commissioners, and is liable in case for refusing to sign the bill of entry when the duty was tendered. *Barry* v. *Arnaud*, 2 *P. & D.* 233.

(*b*) See also 3 & 4 Will. IV. c. 52, s. 117.

(*c*) See also 3 & 4 Will. IV. c. 52, s. 33. See also, as to bribery in Smuggling Act, *post*, Section III.

Officers.

3 & 4 Will. 4, c. 51.

any duties of Customs to receive for his own use, if freely given, so much as, added to any fraction below sixpence, shall make the same amount to sixpence."

Previous appointments and securities to remain in force.

Sect. 9. "That all commissions, deputations, and appointments granted to any officers of the Customs, in force at the time of the commencement of this act, shall continue in force as if the same had been afterwards granted under and by virtue of the authority of this act; and that all bonds which shall have been given by any such officers and their respective sureties for good conduct, or otherwise, shall remain in full force and effect."

Oath of office (a).

Sect. 10. "That every person who shall be appointed to any office or employment in the service of the Customs, under the control and direction of the commissioners of the Customs in any part of his Majesty's dominions, shall, at their respective admissions thereto, take the following oath; that is to say,

"*I, A. B., do swear to be true and faithful in the execution, to the best of my knowledge and power, of the trust committed to my charge and inspection in the service of his Majesty's Customs; and that I will not require, take, or receive any fee, perquisite, gratuity, or reward, whether pecuniary or of any sort or description whatever, either directly or indirectly, for any service, act, duty, matter, or thing done or performed or to be done or performed in the execution or discharge of any of the duties of my office or employment, on any account whatever, other than my salary, and what is or shall be allowed me by law, or by any special order of the commissioners of his Majesty's Treasury or the commissioners of his Majesty's Customs for the time being. So help me God.*"

Hours of attendance and division of service in those hours.

Sect. 11. "That it shall be lawful for the said commissioners of his Majesty's treasury by their warrant from time to time, to appoint the hours of general attendance of the commissioners and respective officers of the Customs, and other persons in the service of the Customs, at their proper offices and places of employment, and that it shall be lawful for the commissioners of his Majesty's Customs, to appoint the times during such hours at which any particular parts of the duties of such officers and other persons respectively shall be performed by them."

Officers of Customs not liable to serve parochial and other local offices.

Sect. 12. "That no commissioner of Customs, nor any officer of Customs, or person employed in the collection or management of or accounting for the revenue of Customs or any part thereof, nor any clerk or other person acting under them, shall, during the time of his acting as such commissioner or as such officer, or of his being so employed as aforesaid, or of his acting as such clerk or other person as aforesaid, as the case may be, be compelled to serve as a mayor or sheriff, or in any corporate or parochial or other public office or employment, or to serve on any jury or inquest, or in the militia, any law, usage, or custom to the contrary thereof notwithstanding."

Holidays.

Sect. 13. "That no day shall be kept as a public holiday by the Customs, except Christmas-day and Good Friday in every year, and any days appointed by his Majesty's proclamation for the purpose of a general fast or of a general thanksgiving, and also so far as regards Scotland, any days appointed for such purposes by authority of the general assembly, and also such days as shall have been appointed for the celebration of the birthdays of their Majesties and of their successors, and that such days shall be kept as public holidays by the officers and servants of the dock companies in the United Kingdom."

Collector in London to pay duties daily to receiver general.

Sect. 14. "That the collector of the Customs in the port of London shall pay into the hands of the receiver general of the Customs the whole of the monies which he shall receive on account of the duties of Customs on the day on which he shall receive the same, or as near the whole as may be, save and except such sum or sums of money as shall from time

(a) See note (c), *post*, p. 487.

Receiver General.

3 & 4 Will. 4, c. 51.

In London debentures and orders to be paid by receiver general

to time, by virtue of the special order of the commissioners of his Majesty's Customs, be directed to be deducted, paid, or allowed therefrom."

Sect. 15. "That every sum of money which shall be due in the port of London upon any debenture, certificate, or other instrument or document whatever, for the payment of any money out of the duties of Customs, shall be paid by the receiver general of the Customs out of any money in his hands arising from the duties of Customs, and every such payment shall be allowed by the commissioners for the better examining and auditing the public accounts of this kingdom in the settling or auditing of the accounts of the receiver general of the Customs; and when any such payment shall become due at any other port in the United Kingdom, the same may be paid by the collector at such port, the controller being duly apprized thereof, out of any of the monies in his hands arising from the duties of Customs, and under such directions and instructions for the due execution of their offices as shall from time to time be given to them by the commissioners of the Customs." [*As to audit in Scotland, see* 2 & 3 *Will. IV. c.* 103, *Appendix.*]

Payment at outports by collector.

Commissioners may close accounts of collectors.

Sect. 16. "That it shall be lawful for the commissioners of his Majesty's Customs finally to settle and close the accounts of any collectors or receivers of any part of the revenue of the Customs or other duties under their management, notwithstanding any erroneous appropriation of any duties of Customs received by such collectors or receivers; and the said commissioners are hereby empowered to correct such appropriation, in order to prevent the accounts of any such collectors or receivers from being kept open; and all such corrections shall be allowed by the commissioners for auditing the public accounts in the passing the general accounts of Customs, subsidies, or impositions."

Commissioners of Customs may direct the sums herein mentioned to be paid on passing entries

Sect. 17. "That it shall be lawful for the commissioners of His Majesty's Customs to authorize the proper officers to demand, on passing of every entry, the sum of one shilling; and upon the issuing of any cocket, if such cocket be,

	£	s.	d.
For British goods, the sum of - - - - - -	0	1	6
Or if such cocket be for foreign goods, or for foreign wines and spirits contained in glass, the sum of - -	0	2	6

Application thereof.

And that the officers of his Majesty's Customs shall be authorized to refuse to pass any such entry or to grant any such cocket until such charges shall be paid: provided always, that all such charges shall be carried and applied towards any superannuation fund for the officers of the Customs, or applied, reduced, or abolished as the commissioners of his Majesty's treasury may from time to time, by warrant under their hands or the hands of any two or more of them, be pleased to direct."

Salaries not subject to duties

Sect. 18. "That all salaries, allowances, or compensations granted or allowed to any officer, clerk, or other person in the service of the Customs shall be paid without any abatement or deduction on account of any duties imposed by any act of Parliament, unless expressly charged thereon (*a*).

Receiver General.

All monies received by receiver general of Customs in England shall be paid into the bank of England.

Sect. 19. "And whereas it is expedient that regulations should be established by law in the office of the receiver general of the Customs in England for depositing in the Bank of England all the monies, bills, drafts, and notes received by such receiver general on account of the revenue under the management of the commissioners of customs, except as hereinafter mentioned, until the same shall be paid into the exchequer; enacts that all monies, bills, notes, and drafts received by or coming to the hands of the receiver general of the Customs in England

(*a*) As to Income Tax thereon, see 5 & 6 Vict. c. 35, s 146, Schedule E, rule 3rd.

Receiver General.

3 & 4 Will. 4, c. 51.

on account of the revenue of Customs in Great Britain shall be paid by him into the hands of the governor and company of the Bank of England; (that is to say), such monies and notes, and such of the bills and drafts as shall be already accepted, or shall not require acceptance (having been first duly endorsed), shall be paid as aforesaid on the day on which the same shall have been received, and such of the bills and drafts as shall require acceptance, and not be already accepted when received, (the same having been first duly endorsed where necessary), within three days after the same shall have been accepted, for which monies, bills, notes, and drafts the entry in the book hereinafter mentioned shall be a sufficient discharge; and all such monies, bills, notes, and drafts so to be paid to the governor and company of the Bank of England shall be placed to an account to be raised in the books of the said governor and company, and to be intituled 'The account of the public monies of the receiver general of Customs,' inserting the name of such receiver general for the time being."

Money for ordinary payments may be retained.

Sect. 20 provides and enacts, "that it shall be lawful for such receiver general to retain and keep in his own hands, for the payment of casual and ordinary and daily demands, out of the monies so received by him as such receiver general, a sum not exceeding one thousand pounds at the close of each day, and also any further sum which he shall be directed to retain by the said commissioners, not exceeding four thousand pounds, and also any further sum, with the permission in writing of any three or more of the said commissioners of his Majesty's treasury."

Bank to keep account, to be returned to Customs for inspection.

Sect. 21. "That the governor and company of the Bank of England, or some person duly authorized in that behalf, shall daily, upon receiving any money, bills, notes, or drafts from such receiver general of the Customs, make an entry of the money, bills, notes, and drafts so received in a book to be provided by the governor and company of the Bank of England, which book shall be forthwith re-delivered to the persons making the payments for the Customs, and inspected daily after its return by the controller general of the Customs or his clerk, (such clerk being first duly authorized by him, and for whose conduct he shall be answerable), who shall compare the same with the account of monies, bills, notes, and drafts received by the said receiver general, for the purpose of ascertaining that the receiver general constantly pays into the bank all the money, bills, notes, and drafts which he ought to do under the provisions of this act; and any default which such controller general or his clerk may discover in that behalf shall be immediately reported by him to the said commissioners of his Majesty's Customs, who shall report the same, unless it shall appear to them to have happened by mistake or inadvertence, to the said commissioners of his Majesty's treasury."

Money carried to Exchequer to be written off at the Bank.

Sect. 22. "That the monies placed to the account of the receiver general as aforesaid in the Bank of England shall be paid into the Exchequer from time to time as by law is directed in manner following; (that is to say), the receiver general, or his clerk duly authorized by him for that purpose, and for whose conduct therein he shall be answerable, shall make an order weekly upon the governor and company of the Bank of England, which order shall be countersigned by the controller general or his clerk, to write off from his account the sum specified; and the said governor and company, or some person duly authorized on their behalf, shall thereupon write off such sum, and deliver a note, drawn and cancelled in such manner as shall be approved by the said commissioners of his Majesty's treasury, for the amount, to the receiver general or his clerk, who shall pay the same into the Exchequer; and the bank clerks attending there shall receive it as so much cash; and it shall not be lawful for the governor and company of the Bank of England to pay or transfer any part of the money so paid in and placed to the account of such receiver general from such

Receiver General.

& 4 Will. 4, c. 51.

Bills, &c. delivered to solicitor of Customs for legal purposes.

account otherwise than into the Exchequer in manner aforesaid, and except in the manner hereinafter directed, or to deliver any note or notes, bill or bills of exchange, save and except to the solicitor of the Customs or his clerk, upon his application for the same, together with the receiver general or his clerk and the controller general or his clerk, for the sole purpose of taking out an extent for the security of the money for which such bill of exchange or draft shall have been given, or to the said receiver general or his clerk, any bills, notes, or drafts which may be protested for nonpayment, except as hereinafter is mentioned, in which case the commissioners of his Majesty's Customs shall be immediately acquainted therewith, if sitting, by such solicitor, receiver general, or controller general, or, if not sitting, at the time of their assembling; and such delivery shall be entered by the bank in the book to be kept as is herein directed."

Receiver general may draw on the Bank to pay drawbacks, &c.

Sect. 23. "That in order that the several payments directed by order of the commissioners of his Majesty's Customs to be made by the said receiver general to merchants or any other persons on account of drawbacks or bounties, or on any other account whatever, may be made without delay, and for the payment of which the money then in the hands of the said receiver general shall be insufficient, it shall be lawful for the said receiver general, or his clerk deputed and authorized by him for that purpose, and for whose conduct therein he shall be answerable, to draw out of the Bank of England, as occasion may require, such sum or sums of money as may be sufficient to answer the purpose aforesaid; and that every draft or order on the bank for money for any of the said purposes shall be countersigned by the controller general, or his clerk to be deputed and authorized by him for that purpose, and for whose conduct therein he shall be answerable; and that the said receiver general shall from time to time account for the monies so to be drawn by him or his clerk out of the bank."

Drafts to be countersigned by controller general.

Officers of Exchequer to be furnished with appropriation paper.

Sect. 24. "And in order that separate accounts may be kept at the Exchequer of the monies paid in on various branches of the Customs pursuant to law, the said receiver general of the Customs shall on every Monday morning furnish the proper officers of the Exchequer with an appropriation paper, stating the heads under which the receipts of the preceding week are to be applied." (See also sect. 16).

On death or removal of receiver general, balance to vest in successor.

Sect. 25. "That upon the death, resignation, or removal of the present and of every other receiver general of the Customs hereafter to be appointed, the balance of cash for which he shall at that time have credit on his account as such receiver general with the governor and company of the Bank of England shall, as soon as a successor shall be appointed to the said office, actually vest in such successor, and until such successor shall be appointed, in such person or persons as shall for the time being be duly authorized to execute the duties of the said office, in trust for the service of the public, and be forthwith transferred, carried over, and placed to the account of such successor, or other person or persons as aforesaid, to be applied to the said service in pursuance of the like drafts and orders as aforesaid."

Receiver general to keep account.

Sect. 26. "That the receiver general of the Customs for the time being shall keep the account with the bank of all monies issued by and paid to the bank on his account for the service of the public; and the said receiver general, observing the rules and regulations hereby prescribed, shall not be answerable for any money, bills, notes, and drafts which he shall have so paid or caused to be paid into the Bank of England; and the governor and company of the Bank of England shall be answerable for all the monies, bills, notes, and drafts which shall be actually received by them from and on account of such receiver general as aforesaid, except such bills as may have been returned in manner aforesaid." (See sect. 22).

Punishment for forgery on receiver general,

Sect. 27. "That if any person or persons shall knowingly and wilfully forge or counterfeit, or cause or procure to be forged or counter-

Oaths.

3 & 4 Will. 4, c. 51.

transportation for life.

feited, or knowingly and wilfully act or assist in forging or counterfeiting, the name or handwriting of any receiver general of the Customs, or of any controller general of the Customs, or of any person acting for them respectively as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money in the hands or custody of the governor and company of the Bank of England, on account of the receiver general of the Customs; or shall forge or counterfeit, or cause or procure to be forged or counterfeited, or knowingly and wilfully act or assist in the forging or counterfeiting, any draft, instrument, or writing in form of a draft made by such receiver general or person as aforesaid; or shall utter or publish any such, knowing the same to be forged or counterfeited, with an intention to defraud any person whomsoever, every such person or persons so offending, being thereof lawfully convicted, shall be and is and are hereby declared and adjudged to be guilty of felony, and shall be transported beyond the seas for life."

Oaths (a).

Collectors, &c. authorized to administer oaths.

Sect. 28. "That in all cases wherein proof on oath shall be required by any law, or shall be necessary for the satisfaction or consideration of the commissioners of his Majesty's Customs, in any matter relating to any business under their management, the same may be made before the collector or controller of the Customs at the port where such proof shall be required to be made, or before the persons acting for them respectively, and who are hereby authorized and empowered to administer the same."

Surveyors general, &c. may examine witnesses on oath.

Sect. 29. "That upon examinations and inquiries made by any surveyor general of the Customs, or any inspector general of the Customs, for ascertaining the truth of facts relative to the Customs, or the conduct of officers or persons employed therein, and upon the like examinations and inquiries made by the collector and controller of any out-port in the United Kingdom, or of any port in the Isle of Man, or made by any person or persons in any of the British possessions abroad appointed by the commissioners of his Majesty's Customs to make such examinations and inquiries, any person examined before him or them as a witness shall deliver his testimony on oath, to be administered by such of the surveyors general, or such of the inspectors general, or such collector and controller, or such person or persons as shall examine him, and who are hereby authorized to administer such oath; and if such person shall be convicted of making a false oath touching any of the facts so testified on oath, or of giving false evidence on his examination on oath, before any of the surveyors general or inspectors general of the Customs, or such collector and controller, or such person or persons, in conformity to the directions of this act, every such person so convicted as aforesaid shall be deemed guilty of perjury, and shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury."

False oath deemed perjury.

Lands and Buildings.

Sect. 30. "That all manors, messuages, buildings, lands, tenements,

(a) The 1 & 2 Will. IV. c. 4, s. 1, abolished all oaths and affirmations formerly required to be taken and made in the Customs and Excise departments of his Majesty's revenue, except in those cases specially provided for in ss. 2 and 4, and substituted a declaration in writing. The 3 & 4 Will. IV. c. 50, s 2, however repealed that act, so far as it related to the Customs. The legislature, then, in the 3 & 4 Will. IV. c. 51, as cited in the text, made fresh enactments respecting the administering oaths in matters connected with the Customs. Certain amendments being still found necessary, a subsequent statute (the 4 & 5 Will. IV. c. 89), which is the law at the present day, enacted in s. 2, that except in those cases where an oath is required by the 3 & 4 Will. IV. c. 51, a declaration in writing is to be made in lieu of an oath. See "Oaths," Vol. V.

Lands and buildings.

3 & 4 Will. 4, c. 51.

Lands and buildings already taken for the service of his Majesty's Customs to be vested in secretary of Customs for time being;

and hereditaments which have heretofore been purchased, acquired, or taken for the use and service of his Majesty's Customs, together with the rights, members, easements, and appurtenances to the same respectively belonging, (other than and except such messuages, lands, tenements, and hereditaments as may be of copyhold tenure), shall be and become and remain and continue vested in the secretary for the time being to the commissioners of his Majesty's Customs, and respective successors as secretaries in such service, according to the respective nature and quality of the said manors, messuages, buildings, lands, tenements, and hereditaments, and the several estates and interests of and in the same respectively, in trust for his Majesty, his heirs and successors, for the use and service of his Majesty's Customs in the said United Kingdom."

and all lands, &c. to be hereafter purchased for the use of the Customs.

Sect. 31. "That all other manors, messuages, buildings, lands, tenements, and hereditaments (other than and except as aforesaid) which shall at any time or times hereafter be purchased for the use and service of his Majesty's Customs, with the rights, members, easements, and appurtenances to the same respectively belonging, shall in like manner be and become and remain and continue vested in the secretary for the time being to the said commissioners and his successors, as secretaries in such service, according to the respective nature and quality of the said manors, messuages, buildings, lands, tenements, and hereditaments, and the several estates and interests of and in the same respectively in trust as aforesaid."

Secretary, under authority of commissioners, may sell or let lands.

Sect. 32. "That it shall and may be lawful for the said secretary for the time being, by and under the authority and direction of the said commissioners (testified by writing under their hands and seals), to sell, exchange, or in any manner dispose of, or to let, set, or demise, as well any of the freehold and leasehold manors, messuages, buildings, lands, tenements, and hereditaments respectively which shall for the time being be vested in them respectively under and by virtue of this present act, with their respective appurtenances, as also any of the copyhold messuages, buildings, lands, tenements, and hereditaments which shall have been surrendered to and vested in any person or persons, and his, her, or their heirs and assigns, in trust for his said Majesty or any of his predecessors, his, or their heirs or successors, for the use and service of his Majesty's Customs in the said United Kingdom, or any of them, either by public auction or private contract; and as to the said freehold and leasehold manors, messuages, lands, tenements, and hereditaments, that it shall and may be lawful to and for the said secretary for the time being, and as to the said copyhold messuages, lands, tenements, and hereditaments, that it shall and may be lawful to and for the said person or persons in whom the same shall be vested as aforesaid, in due form of law, to convey, surrender, assign, make over, or to grant or demise the same respectively, or any of them, as the case may require, to any person or persons who shall be willing to purchase or take the same respectively, and also to carry into execution any contract or contracts already entered into for the sale of any such freehold, copyhold, or leasehold messuages, lands, tenements, or hereditaments as aforesaid, with such alterations or variations as the said commissioners for the time being, or any two or more of them, shall by writing under their hands direct, and for that purpose to make and execute all such conveyances, assurances, and agreements as may be thought proper; and also to do any other act, matter, or thing in relation to any such manors, messuages, buildings, lands, tenements, and hereditaments which shall by the said commissioners be deemed beneficial for the public service in relation thereof, or for the better management thereof, and which might be done by any person or persons having a like interest in any such manors, messuages, lands, tenements, or hereditaments."

Monies produced by sale of such

Sect. 33. "That the monies to arise and be produced by sales or exchange of any of the said manors, messuages, lands, tenements, or

Lands and buildings.

3 & 4 Will. 4, c. 51. lands to be paid to receiver general.

hereditaments which shall be sold or exchanged or conveyed under the provisions of this present act, including the monies already paid by way of deposit for the purchase of any hereditaments already contracted to be sold, and the residue of the monies to be received in respect or on account of such contract, shall be paid by the respective purchaser or purchasers thereof, or the person or persons making such exchange, unto the receiver general of his Majesty's Customs for the time being, or to such person or persons as the said commissioners for the time being, or any four or more of them, shall direct or appoint to receive the same, in trust for his Majesty, his heirs and successors, for the use and service of the said Customs; and that the receipt of the said receiver general, or such other person or persons as aforesaid, for such monies, (such receipt to be endorsed on every such conveyance, surrender, or assignment as aforesaid), shall effectually discharge the purchaser or purchasers, or person or persons, by whom or on whose account the same shall be so paid."

After payment, purchasers to stand possessed of lands, &c.

Sect. 34. "That immediately from and after the payment of such purchase-money, and the execution of every such conveyance, surrender, and assignment as aforesaid, the purchaser or purchasers therein named shall be deemed and adjudged to stand seised and possessed of the manors, messuages, lands, tenements, and hereditaments which shall be so purchased by, and conveyed, surrendered, assigned, or made over to him, her, or them respectively, freed and absolutely discharged of and from all and all manner of prior estates, leases, rights, titles, interests, charges, incumbrances, and demands whatsoever which can or may be had, made, set up, in, to, out of, or upon or in respect of the same manors, messuages, lands, tenements, and hereditaments, by any person or persons whomsoever, by, from, or under or in trust for his Majesty, his heirs and successors, on any account whatsoever, save and except such estates, leases, rights, titles, interests, charges, incumbrances, claims, and demands, if any, as in any such conveyance, surrender, or assignment shall be excepted."

Treasury may authorize persons to survey and mark out lands for watch houses, &c.

Sect. 35. "That it shall be lawful for the said lord high treasurer or for the said commissioners of the treasury for the time being from time to time, by any writing under their hands, to authorize any person or persons to survey and mark out any lands, not exceeding one half acre at any one station, which are or may be wanted for the purposes of erecting and maintaining watch-houses, dwelling-houses, and other buildings requisite and necessary for the security and protection of the revenues of Customs and Excise, with all necessary ways unto and from the same, or any or either of them, such lands being situated within half a mile of the sea shore or of the tideway of any navigable river, and to authorize any person or persons, by warrant as aforesaid, to treat and agree with the owner or owners, or any person or persons interested therein, of any such lands, or of any messuages, tenements, hereditaments, or premises which may be requisite and necessary as aforesaid, for the possession thereof for such time or term of years as the public service shall require."

Bodies politic, &c. may contract for sale.

Sect. 36. "That it shall be lawful for all bodies politic or corporate, ecclesiastical or civil, and all feoffees or trustees for charitable or other public purposes, and for all tenants for life and tenants in tail, and for the husbands, guardians, trustees, committees, curators, or attornies of such of the owners or proprietors of or persons interested in any such lands, messuages, tenements, hereditaments, or premises required for such public service as shall be femes covert, infants, lunatics, idiots, or persons beyond the seas, or otherwise incapable of acting for themselves, to contract and agree with such person or persons authorized as aforesaid for the grant of any lease of such lands, messuages, tenements, hereditaments, or premises, either for any term of years certain therein, or for such periods as the public service shall require, and to demise or grant the same unto the said lord high treasurer or commissioners of his

Lands and buildings.

3 & 4 Will. 4, c. 51.

Persons refusing to sell or accept consideration offered, two justices, &c. may put his Majesty's officers into possession, and a jury shall be summoned, who shall find compensation.

Majesty's treasury, in trust for his Majesty, his heirs and successors, accordingly; and all such leases and agreements shall be valid and effectual in law to all intents and purposes whatsoever."

Sect. 37. "That in case any such bodies or other persons hereby authorized to contract on behalf of themselves or others as aforesaid, or any other person or persons, interested in any such lands so marked out, or in any messuages, tenements, hereditaments, or premises required as aforesaid, shall, for the space of fourteen days next after notice in writing subscribed by such person or persons authorized as aforesaid shall have been given to the principal officer or officers of any such body, or to such other persons hereby authorized to contract on behalf of others, or interested themselves as aforesaid, or left at his, her, or their usual place of abode, refuse or decline to treat or agree, or by reason of absence shall be prevented from treating or agreeing, with such person or persons authorized as aforesaid, or shall refuse to accept such annual rent or sum as shall be offered for the hire thereof, either for a time certain or for such period as the public service may require, and in case also it shall not be practicable to procure, by voluntary bargain or sale, any other land situate as aforesaid, or of any messuages, tenements, hereditaments, or premises required as aforesaid, and suited to the purpose for which such lands, messuages, tenements, hereditaments, or premises are required, then and in such case *it shall be lawful for two or more justices*, or three or more deputy lieutenants, (one of whom shall be a justice of the peace), or two or more deputy governors for the county, riding, stewartry, city, or place within such lands, tenements, messuages, hereditaments, or premises shall be, to put his Majesty's officers in possession of such lands, messuages, tenements, hereditaments, or premises, and for that purpose to issue a warrant under their hands and seals, requiring possession to be delivered to such of his Majesty's officers as shall be named in the said warrant; and it shall also be lawful for such person or persons so authorized as aforesaid to require the said justices, deputy lieutenants or deputy governors of such county, riding, stewartry, city, liberty, or place, to issue their warrant to the sheriff or sheriffs of the county, riding, stewartry, city, or place wherein such lands, messuages, tenements, hereditaments, or premises shall be situate, to summon a jury; and every such sheriff or sheriffs is and are hereby authorized and required to summon and return a jury, properly qualified, of the number of twenty-four, and in the manner required by the laws of England, Ireland, and Scotland respectively, who shall meet at some convenient time and place to be mentioned in such summons, out of whom a jury of twelve shall be drawn in such manner as juries for the trial of issues joined in his Majesty's courts at Westminster and Dublin are drawn by law in England or Ireland respectively, and in such manner as juries are drawn by law for the trial of offences in Scotland; and in case a sufficient number shall not appear, the sheriff or sheriffs shall choose others of the bystanders, or that can speedily be procured, being qualified as aforesaid; and the said jurymen may be challenged by the parties on either side, but not the array; and the said justices, deputy lieutenants, or deputy governors respectively, on the application of the said persons so authorized, or of any parties concerned, may and shall summon witnesses, and adjourn any such meeting if jurymen or witnesses do not attend; and the jury, on hearing any witnesses and evidence that may be produced, shall on their oaths (which oaths, as also the oaths of such witnesses, the said justices, deputy lieutenants, or deputy governors respectively are hereby empowered and required to administer) find the compensation to be paid for the possession or use of such lands, as the case may be."

Lands suitable may be taken in lieu of such as have been marked out.

Sect. 38 provides and enacts, "That if the owner or owners of any lands, messuages, tenements, hereditaments, or premises so required, or any person or persons interested therein, shall at any time before the

Lands and buildings.

3 & 4 Will. 4, c. 51.

summoning of such jury as aforesaid give notice in writing of any other lands situate as aforesaid, and of any other messuages, tenements, hereditaments, or premises so required as aforesaid, and suited to the purpose for which such lands are required, and which the owner or owners thereof or persons interested therein are willing to treat and agree for, then and in such case the jury so to be summoned shall previously find the facts, whether the lands so indicated in such notice are situate within the distance aforesaid, and are suited to the purpose for which such lands, tenements, messuages, hereditaments, or premises may be required, and whether the owner or owners thereof or persons interested therein are willing to treat and agree for the same; and if they shall so find, the owner or owners of or persons interested in the lands so surveyed or marked out as aforesaid, or of the messuages, tenements, hereditaments, or premises so required, shall not be compellable by virtue of this act to sell or dispose of the same: provided always, that where the owner or owners of or persons interested in any lands, messuages, tenements, hereditaments, or premises required by virtue of this act to be given up for the purposes aforesaid, shall prefer to sell the same outright, and shall be able to make a good title to the fee simple thereof, it shall be lawful for them to insist on so doing; and in such case the jury so summoned as aforesaid shall find the value of the fee simple of such lands, tenements, messuages, hereditaments, or premises, and the same shall be paid to the owner or owners thereof or persons interested therein in the manner directed by this act."

Persons dissatisfied with verdict may appeal to Exchequer in England or Ireland, or Court of Session, &c. in Scotland.

Sect. 39 provides and enacts, "That if the said lord high treasurer, or the said commissioners of his Majesty's treasury, or any person interested therein, shall be dissatisfied with the verdict of any such jury, it shall be lawful for them or their attornies in England and Ireland to apply to the Court of Exchequer at Westminster or Dublin respectively in the next term, and in Scotland to apply within fourteen days after the finding any such verdict to the Court of Session in Scotland in time of session, or lord ordinary on the bills in time of vacation, and to suggest to the said courts or lord ordinary respectively that they have reason to be dissatisfied with such verdict, and forthwith to give notice thereof to the said lord high treasurer or commissioners, or party (as the case may be); and thereupon in England and Ireland the proceedings that shall have been had, and the verdict of such jury, shall be returned into the said Courts of Exchequer respectively; and if it shall appear to the said courts to be proper, a suggestion shall be entered on such proceedings as aforesaid, and a writ shall thereupon, by rule of such court, or order of any judge of such court, be directed to the sheriff of such county where the lands shall lie, or the messuages, tenements, hereditaments, or premises shall be, or if the same shall lie or be in two counties, to the sheriff of either of such counties, to summon either a common or special jury, according to the application that shall have been made on that behalf, and as the court or such judge shall allow, and who shall respectively be qualified according to law, to appear before the said justice of assize or nisi prius of that county at the next assizes or sittings of nisi prius if the same shall not happen sooner than twenty-one days after such suggestion, otherwise at the next succeeding assizes or sittings; and the compensation to be paid for the possession or use of such lands, messuages, tenements, hereditaments, or premises shall at such assizes or sittings be ascertained by such jury, in like manner as any damages may be inquired of upon any inquisition or inquiry of damages by any jury before any judge of assize or nisi prius; and the verdict of such jury shall be returned to the said Courts of Exchequer, and shall be final and conclusive; and in Scotland, if it shall appear proper to the said Court of Session or lord ordinary, upon such application so to do, the said court or ordinary shall order and direct the sheriff of the county where such lands, messuages, tenements, hereditaments, or premises shall lie and be, or if the same shall lie or be

Lands and buildings.

3 & 4 Will. 4, c. 51.

in two counties, the sheriff of either of such counties, to summon another jury in the manner in which juries are summoned in Scotland, properly qualified according to law, to appear before the lords or lord of justiciary at the next circuit if the same shall not happen sooner than twenty-one days after such application, otherwise at the next succeeding circuit; and the compensation as aforesaid for the land, messuages, tenements, hereditaments, and premises shall at such circuit be ascertained by a jury drawn from the jury summoned as aforesaid in such manner as juries are drawn in Scotland under the direction of the said lords or lord of justiciary as aforesaid; and the verdict of such last-mentioned juries shall be final and conclusive, without being subject to review or challenge of any kind, unless the court that shall have allowed such inquiry shall think fit, on any application made within four days after the commencement of the succeeding term or session, if in Scotland, to order any new trial in relation thereto."

Jury, in ascertaining compensation for premises, to settle proportion to be paid lessees, &c.

Sect. 40 provides and enacts, "That it shall be lawful for any jury, *impanelled before any justice of the peace*, magistrate, deputy lieutenant, or deputy governor, or before any judge of assize or nisi prius, to ascertain the compensation to be paid for any lands under this act, and they are hereby required to ascertain and settle the proportion to be paid out of such compensation to any person or persons having any interest as lessees or tenants at will, or otherwise, in any such lands, and the proportion to be paid out of such compensation shall be returned on the verdict: provided also, that where any such inquiry before any judge of assize or nisi prius, or lords or lord of justiciary, shall be had on the application of any such lessee or tenant at will, or other person having any inferior interest in any such lands, messuages, tenements, hereditaments, or premises, who may have been dissatisfied with the proportion of compensation settled by the jury to be paid in respect of such interest, it shall not be lawful for the jury in any such case to alter the amount of the entire compensation awarded by any former verdict to be paid for such lands, messuages, tenements, hereditaments, or premises, but only the proportion thereof to be paid to the person or persons having separate interests therein; and it shall not be lawful for any jury, on any inquiry had before any judge of assize or nisi prius, or lords or lord of justiciary, as to any compensation on the application of the said lord high treasurer or commissioners of his Majesty's treasury, in any case in which the whole compensation awarded by the former jury is confirmed by the jury on such inquiry, to alter the proportion that shall have been settled by any such former jury as to any separate interest in any such lands, tenements, messuages, hereditaments, or premises."

Security to be given for costs

Sect. 41 provides and enacts, "That it shall be lawful for the court or judge, or lord ordinary, making any such rule or order, to require that the party on whose application the same shall be made shall give such security as shall to such court, judge, or lord ordinary seem proper, for payment of costs, under such circumstances as shall be specified in any rule or order made for that purpose."

Upon delivering up lands to owners, all erections for public service to be removed, making compensation to owners.

Sect. 42. "That in all cases where any lands shall be taken under the provisions of this act for any term of years or for such period only as the public service shall require, it shall be lawful for the lord high treasurer or commissioners of his Majesty's treasury, or any other person or persons so authorized as aforesaid, at any time before the possession of any lands which shall have been taken for the purposes aforesaid shall be delivered up to the owner or owners thereof, or other person or persons acting on his, her, or their behalf, to take down and remove all such buildings or other erections which shall or may have been built or erected thereon for the public service, and to carry away the materials thereof, making such compensation to the owner or owners of such lands, or other person or persons acting on his, her, or their behalf, for the damage or injury which may have been done thereto or to the soil thereof by the erection of any such buildings, or removing and carrying

Lands and buildings.

3 & 4 Will. 4, c. 51.

away the same, or otherwise in consequence of the same having been occupied for the public service, as the said lord high treasurer, or the commissioners of his Majesty's treasury, or such other person or persons authorized as aforesaid shall think reasonable, and as shall be agreed upon in that behalf; and if such owner or owners, or other person or persons acting on his, her, or their behalf, shall not be willing to accept the compensation so offered, it shall be lawful for the said lord high treasurer, or the commissioners of his Majesty's treasury, or other person or persons so authorized as aforesaid, to apply to and require two justices of the peace of the county, riding, stewartry, city, or place to settle and ascertain the compensation which ought to be made for such damage or injury as aforesaid; and such justice shall settle and ascertain the same accordingly, and shall grant a certificate thereof; and the amount of such compensation, so settled and ascertained and certified, shall forthwith be paid by warrant of the commissioners of his Majesty's treasury, or any three or more of them, to the person or persons entitled thereto: provided always, that nothing in this act shall extend or be construed to extend to alter, prejudice, or affect any agreement which hath been or shall or may be entered into by any such person or persons authorized as aforesaid with any owner or owners of any such lands, or other person or persons acting on his, her, or their behalf, in relation to any such buildings or erections, but every such agreement shall remain valid and effectual in like manner as if this act had not passed."

Purchase-money belonging to incapacitated persons, &c. to be paid to the proper officer of Exchequer for their use.

Sect. 43. "That in all cases where any money shall have been or shall be agreed, or shall have been or shall be found by the verdict of any jury, to be paid or given for the use or possession of any lands, messuages, tenements, hereditaments, or premises taken by virtue of this act, belonging to any person or persons under any disability or incapacity, or not having the absolute interest therein, the same shall be paid by warrant of the commissioners of his Majesty's treasury, or any three of them, into the hands of the proper officer of his Majesty's Court of Exchequer at Westminster, Edinburgh, or Dublin respectively for the time being for receiving the monies belonging to the suitors of the said court respecttively, for the use and benefit of such person or persons; and such officer is hereby authorized and required to receive or accept and to give a discharge for such money, and upon the acceptation or receipt thereof to sign a certificate to the barons or judges of the said Courts of Exchequer respectively, under his hand, purporting and signifying that such money or other consideration was received or accepted by and paid to him in pursuance of this act, for the use and benefit of such person or persons who shall be named and described in such certificate; and the said certificate shall be filed or deposited in the said Court of Exchequer at Westminster, Edinburgh, or Dublin respectively, and a true copy thereof, signed by such officer of such court, shall and may be read and allowed as evidence for the purposes hereinafter mentioned; and such officer of such court is hereby required, upon receipt of any such sum or sums of money as aforesaid, to pay the same into the Bank of England, or Bank of Scotland, or Royal Bank of Scotland, or Bank of Ireland, as the case may require; and immediately upon the filing or depositing of such certificate the said lands, messuages, tenements, hereditaments, or premises shall be vested in or to the use of his Majesty, his heirs and successors."

Money to be paid into Bank

Barons of Exchequer, &c. on petition of parties interested, to order application of money.

Sect. 44. "That the barons or judges of his Majesty's Court of Exchequer at Westminster, and the barons or judges of his Majesty's Court of Exchequer at Edinburgh or Dublin for the time being respectively, or any two or more of them, shall be and they are hereby authorized and empowered, in a summary way, upon motion or by petition for and on behalf of any person or persons interested in or entitled to the benefit of the money so paid to and received by the proper officer of the said courts respectively, or the interest or produce thereof, and upon reading the certificate directed to be signed by the said officer concerning the same

Signatures of Lords of Treasury.

3 & 4 Will. 4, c. 51.

as aforesaid, and receiving such further satisfaction as they shall think necessary, to make and pronounce such orders and directions for paying the said money, or any part of the same, or for placing out such part thereof as shall be principal in the public funds or upon government or real securities, and for payment of the dividends or interest thereof, or any part thereof, to the respective persons entitled to receive the same, or for laying out the principal, or any part thereof, in the purchase of other lands to be conveyed and settled to, for, and upon the same uses, trusts, intents, and purposes as the said lands so taken stood settled at the time of the payment of such money as aforesaid, as near as the same can be done, or otherwise concerning the disposing of the said money, or any part thereof, and the interest of the same, or any part thereof, for the benefit of the person or persons respectively, or for appointing any person or persons to be trustee or trustees for all or any of such purposes, as the said courts respectively shall think just and reasonable."

On death, removal, or resignation of officer of Exchequer, stocks and securities shall vest in successor.

Sect. 45. "That upon the death, removal, or resignation of any such officer of the said Courts of Exchequer, all stocks and securities vested in him by virtue of this act, shall vest in the succeeding officer of the Exchequer, for the purposes hereinbefore mentioned, without any assignment or transfer; and all monies paid in the said banks respectively, in pursuance of this act, or remaining in the hands of any such officer at his death, resignation, or removal, and not vested in the funds or placed out on securities as aforesaid, shall be paid over to the succeeding officer for the like purpose for the time being."

Gardens not to be affected.

Sect. 46 provides and enacts, "That nothing in this act contained shall be construed to extend to any garden or pleasure ground, or to any land immediately contiguous to and used as the curtilage or homestead of any dwelling-house."

Treasury.

Documents signed by three commissioners of the treasury.

Sect. 47. "That every order, document, instrument, or writing relating to the Customs, or to the law of navigation, required by any law at any time in force to be under the hands of the commissioners of his Majesty's treasury, being signed by three or more of such commissioners, shall be deemed to be an order, document, instrument, or writing under the hands of the commissioners of his Majesty's treasury accordingly."

II. Regulation of the Customs.

[3 & 4 Will. IV. c. 52; 4 & 5 Will. IV. c. 89; 5 & 6 Will. IV. c. 66; 6 & 7 Will. IV. c. 60; 1 & 2 Vict. c. 113; and 5 & 6 Vict. c. 47.]

3 & 4 Will. 4, c. 52.

The several enactments in this statute seem to be arrangeable under the following heads and subdivisions:

INWARDS.
- *General Provisions.*
- *Manifest.*
- *Report.*
- *Entry.*
- *Prohibitions and Restrictions.*

OUTWARDS.
- *General Provisions.*
- *Ship's Entry.*
- *Entry of Goods.*
- *Clearance of Goods.*

OUTWARDS—*continued.*
- *Clearance of Ship.*
- *Debenture Goods.*
- *Prohibitions and Restrictions.*

COASTWISE.
- *General Provision.*

CONSTRUCTION OF WORDS IN THIS ACT IN GENERAL.

GENERAL RULES.

LICENSED AGENTS, LONDON.

There is a distinction between *management* and *regulation* as regards the Customs; the *first*, the subject of the last section, relates to the *establishment and officers* of the Customs; and the *second, viz. regulations*, to the business of the merchants and the conduct they must observe.

Justices and peace officers may, under the directions of the Acts for the Prevention of Smuggling, (post, Sect. III.), be required to enforce the forfeitures and penalties imposed by the regulating Acts we are about to consider, and therefore a consideration of them is essential.

Inwards.

General provision.

3 & 4 Will. 4, c. 52.

The 3 & 4 Will. IV. c. 52, intituled "An Act for the general Regulation of the Customs," (28th Aug. 1833), after reciting the consolidating act of 6 Geo. IV. c. 107, and that several subsequent acts had been passed for the regulation of the Customs, and declaring it to be necessary, and for the advantage of the trade and commerce of the country, that the said acts should be consolidated, proceeded to enact new general regulations. This act of Will. IV. still forms the *ground-work* of the law respecting the importation and exportation of goods liable to the Customs duties; as it is the last general repealing and consolidating statute upon the subject.

It is perhaps scarcely necessary to remark, that owing to the various fluctuating circumstances, both as regards the articles of commerce themselves, as well as the altered views of commercial policy amongst our legislators, many and considerable alterations have been made in the above statute.

It will be the object of the editor, then, in this section, to point out what these alterations consist of, as contained in the several acts of the 4 & 5 Will. IV. c. 89; 5 & 6 Will. IV. c. 66; 6 & 7 Will. IV. c. 60; 1 & 2 Vict. c. 113; 1 & 2 Vict. c. 120; 3 & 4 Vict. c. 17; 3 & 4 Vict. c. 19, for additional duty on timber; and the 5 Vict. sess. 2, c. 34, for additional duty on sugar, and the New Tariff Act.

The great importance of this latter act, viz. the 5 & 6 Vict. c. 47, by which many of the regulations in the preceding enactments are repealed or altered, requires particular attention. Such amendments and alterations, however, will be found pointed out in the places where they occur, in the statutes of Will. IV. The above is the only mode that can be adopted where portions of so many acts exist upon one subject; and until the New Tariff has stood the test of a few years' legislation, it is unlikely that another consolidating statute, like that of 1833, will be passed.

3 & 4 Will. 4, c. 52.

The 3 & 4 Will. IV. c. 52, then enacted by sect. 1 that it should commence upon the 1st of September, 1833, except where any other commencement was therein particularly directed.

Inwards.

General provision.

No goods to be landed nor bulk broken before report and entry.

Sect. 2, "And whereas it is expedient that the officers of Customs should have full cognizance of all ships coming into any port in the United Kingdom, or in the Isle of Man, or approaching the coasts thereof, and of all goods on board, or which may have been on board such ships, and also of all goods unladen from any ship in any port or place in the United Kingdom or in the Isle of Man," therefore enacts, "that no goods shall be unladen from any ship arriving from parts beyond the seas at any port or place in the United Kingdom or in the Isle of Man, nor shall bulk be broken after the arrival of such ship within four leagues of the coasts thereof respectively, before due report (*a*) of such ship, and due entry (*b*) of such goods shall have been made, and warrant granted in manner hereinafter directed; and that no goods shall be so unladen, except at such times and places (*c*), and in such manner, and by such persons, and under the care of such officers, as is and are hereinafter directed; and that all goods not duly reported, or which shall be unladen contrary hereto, shall be forfeited (*d*); and if bulk be broken contrary hereto, the master of such ship shall forfeit the

Times and places of landing; and care of officers.

Goods not reported or entered, forfeited.

(*a*) See sect. 8.
(*b*) See sect. 17.
(*c*) See sects. 54, 56.
(*d*) See also the Smuggling Act, 3 & 4 Will. IV. c. 53, s. 28, *post*, Section III.

Inwards.

Manifest.

3 & 4 Will 4, c. 52.

If bulk illegally broken, master to forfeit 100*l.*

Certain articles may be landed without entry.

sum of one hundred pounds; and if, after the arrival of any ship within four leagues of the coast of the United Kingdom or of the Isle of Man, any alteration be made in the stowage of the cargo of such ships, so as to facilitate the unlading of any part of such cargo, or if any part be staved, destroyed, or thrown overboard, or any package be opened, such ship shall be deemed to have broken bulk: provided always, that the several articles hereinafter enumerated may be landed in the United Kingdom, without report, entry, or warrant; that is to say, diamonds and bullion (*a*), fresh fish of British taking, and imported in British ships, turbots (*b*) and lobsters fresh, however taken or imported."

Manifest (*c*).

All British ships, and all ships with tobacco, to have manifests.

Particulars of manifest.

Sect. 3. "That no goods shall be imported into the United Kingdom or into the Isle of Man from parts beyond the seas in any British ship, nor any tobacco (*d*) in any ship, unless the master shall have on board a manifest of such goods, or of such tobacco, made out and dated and signed by him at the place or respective places where the same or the different parts of the same was or were taken on board, and authenticated in the manner hereinafter provided; and every such manifest shall set forth the name and the tonnage of the ship, the name of the master, and of the place to which the ship belongs, and of the place or places where the goods were taken on board respectively, and of the place or places for which they are destined respectively; and shall contain a particular account and description of all the packages on board, with the marks and numbers thereon (*e*), and the sorts of goods and different kinds of each sort contained therein, to the best of the master's knowledge, and of the particulars of such goods as are stowed loose, and the names of the respective shippers and consignees, as far as the same can be known to the master; and to such particular account shall be subjoined a general account or recapitulation of the total number of the packages of each sort, describing the same by their usual names, or by such descriptions as the same can best be known by, and the different goods therein, and also the total quantities of the different goods stowed loose; provided always, that *every manifest for tobacco shall be a separate manifest* (*f*) distinct from any manifest for any other goods, and shall, without fail, contain the particular weight of tobacco in each hogshead, cask, chest, or case, with the tare of the same; and *if such tobacco be the produce of the dominions of the Grand Seignor, then the number of the parcels or bundles within any such hogshead, cask, chest, or case, shall be stated in such manifest* (*f*)."

Tobacco manifest (*now not to be separate* (*f*).)

To be produced to officers in colonies, &c.

Sect. 4. "That before any ship shall be cleared out, or depart from any place in any of the British possessions abroad, or from any place in China, with any goods for the United Kingdom or for the Isle of Man, the master of such ship shall produce the manifest to the collector or controller of the Customs, or other proper officer, who shall certify upon the same the date of the production thereof to him: provided always,

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(*a*) As to navigation, see 3 & 4 Will. IV. c. 54, s. 3.

(*b*) Vide 5 & 6 Vict. c. 47, s. 5, note (*c*), 512, which repeals so much of the above section as permits turbots of foreign taking, or imported in foreign ships, to be landed without report, &c.; and excepts such turbots from the regulations as to times and places of landing, and presence of officers of Customs at landing.

(*c*) See a full account of ship's manifest—report—entry—declarations of value—bill of sight—bill of store—certificate—master's oath—permit, &c. 1 *Chitty's Commercial Law*, 731, &c.

(*d*) See restrictions as to packing tobacco, table, sect. 58, p. 513.

(*e*) The 5 and 6 Vict. c. 47, s. 7, repeals the marking the weight on cask, &c., of tobacco.

(*f*) Vide 5 & 6 Vict. c. 47, s. 9, which repeals so much of this section as requires a *separate* manifest for tobacco, and if of the produce of the dominions of the Grand Seignor, then the number of parcels, &c., to be stated in such manifest.

that in all places within the territorial possessions of the East India Company, the servant of the said company by whom the last dispatches of such ship shall be delivered, shall be the proper officer to authenticate the manifest (*b*) as aforesaid; and in all places in China, the chief supercargo of the said company shall be the proper officer for such purpose" (*a*).

Inwards.

Report.

3 & 4 Will. 4, c. 52.

Sect. 5. "That before the departure of any ship from any place beyond the seas, not under the British dominions, where any tobacco has been taken on board such ship for the United Kingdom or for the Isle of Man, the master of such ship shall *produce the manifest of such tobacco* (*b*) to the British consul or other chief British officer, if there be any such resident at or near such place; and such consul or other officer shall certify upon the same the date of the production thereof to him."

To be produced to consuls in foreign countries.

Sect. 6. "That if any goods shall be imported into the United Kingdom or into the Isle of Man, in any British ship, or any tobacco in any ship, without such manifest (*c*), or if any goods contained in such manifest be not on board, the master of such ship shall forfeit the sum of one hundred pounds."

If wanting, or if goods be missing, master to forfeit 100*l.*

Sect. 7. "That the master of every ship required to have a manifest on board (*d*) shall produce such manifest to any officer of the Customs who shall come on board his ship after her arrival within four leagues of the coast of the United Kingdom or of the coast of the Isle of Man, and who shall demand the same for his inspection; and such master shall also deliver to any such officer who shall be the first to demand it, a true copy of such manifest signed by the master; and shall also deliver another copy to any other officer of the Customs who shall be the first to demand the same within the limits of the port to which such ship is bound; and thereupon such officers respectively shall notify on such manifest and on such copies the date of the production of such manifest and of the receipt of such copies, and shall transmit such copies to the collector and controller of the port to which such vessel is first bound, and shall return such manifest to the master; and if such master shall not in any case produce such manifest, or deliver such copy, he shall forfeit the sum of one hundred pounds."

Manifest to be produced within four leagues,

and copies delivered to officers.

Copies to be transmitted to port of destination.

Master not producing to forfeit 100*l.*

Report.

Sect. 8. "That the master (*e*) of every ship arriving from parts beyond the seas at any port in the United Kingdom or in the Isle of Man, whether laden or in ballast, shall, within twenty-four hours after such arrival, and before bulk be broken, make due report of such ship, and shall make and subscribe a declaration to the truth of the same, before the collector or controller of such port; and such report shall contain an account of the particular marks, numbers, and contents of all the different packages or parcels of the goods on board such ship, and the particulars of such goods as are stowed loose, to the best of his know-

Master, within 24 hours, and before breaking bulk, shall report.

Particulars of report.

(*a*) From 22nd April, 1834. See 3 & 4 Will. IV. c. 93, s. 1. And by the 3rd section of that act, the person having the command of any ship or vessel arriving at any place in possession of or under the government of the East India Company, shall make out, sign, and deliver to the principal officer of the Customs, or other person thereunto lawfully authorized, a true and perfect list, specifying names, capacities and description of all persons who shall have been on board such ship or vessel at the time of its arrival, under penalty of £100, &c.

(*b*) The above 4th and 5th sections it is submitted are virtually repealed; for by the 5 & 6 Vict. c. 47, s. 9, the *separate* manifest for tobacco is done away with, the production, &c. therefore, of *the* manifest, as required by the sections in the text above, which meant this separate one, can have now no meaning.

(*c*) i. e. such *general* manifest. Vide preceding note.

(*d*) See sect. 3.

(*e*) His name, if not already in the register, must be first indorsed. See sect. 119, as to who shall be deemed master; also 3 & 4 Will. IV. c. 55, s. 21, as to charge of master of British ship.

Inwards.

Report.

& 4 Will. 4, c. 52.

ledge, and of the place or places where such goods were respectively taken on board, and of the burthen of such ship, and of the country (*a*) where such ship was built, or, if British (*b*), of the port of registry, and of the country of the people to whom such ship belongs, and of the name and country of the person who was master during the voyage, and of the number of the people by whom such ship was navigated, stating how many are subjects of the country to which such ship belongs, and how many are of some other country; and in such report it shall be further declared, whether and in what cases such ship has broken bulk in the course of her voyage, and what part of the cargo, if any, is intended for importation at such port, and what part, if any, is intended for importation at another port in the United Kingdom, or at another port in the Isle of Man respectively, and what part, if any, is prohibited to be imported (*c*), except to be warehoused for exportation only, and what part, if any, is intended for exportation (*d*) in such ship to parts beyond the seas, and what surplus stores or stock (*e*) remain on board such ship, and, if a British ship, what foreign-made sails or cordage (*f*) not being standing or running rigging, are in use on board such ship; and the master of any ship, who shall fail to make such report, or who shall make a false report, shall forfeit the sum of one hundred pounds."

Penalty on failure, 100*l.*

Masters of vessels from Africa to report how many natives they have taken on boar din Africa, and to give bond to maintain or send back such Africans.

Sect. 9. "That the master of every vessel coming from the coast of Africa, and having taken on board at any place in Africa any person or persons being or appearing to be natives of Africa, shall, in addition to all other matters, state, in the report of his vessel, how many such persons have been taken on board by him in Africa; and any such master failing herein shall forfeit the sum of one hundred pounds: provided also, that the master or owner or owners of such vessel, or some or one of them, at the time of making such report, be required to enter into bond to his Majesty in the sum of one hundred pounds, conditioned, to keep harmless any parish, or any extra-parochial or other place maintaining its own poor, against any expense which such parish or other place may be put to in supporting any such person during their stay in the United Kingdom; and any such master, owner or owners refusing or neglecting to enter into such bond shall forfeit the sum of two hundred pounds."

Packages reported "Contents unknown" may be opened and examined.

Prohibited goods in such packages may be forfeited.

Sect. 10. "That if the contents of any package so intended as aforesaid for exportation in the same ship to parts beyond the seas shall be reported by the master, as being unknown to him, it shall be lawful for the officers of the Customs to open and examine such package on board, or to bring the same to the King's warehouse for that purpose; and if there be found in such package any goods which may not be entered for home use, such goods shall be forfeited; or if the goods be such as may be entered for home use, the same shall be chargeable with the duties of importation; unless in either case the commissioners of his Majesty's Customs, in consideration of the sort or quality of such goods, or the small rate of duty payable thereon, shall see fit to deliver the same for exportation."

Master to deliver manifest;

and if required,

Sect. 11. "That the master of every ship shall, at the time of making such report, deliver to the collector or controller the manifest of the cargo of such ship, where a manifest is required (*g*), and, if required by

(*a*) As to navigation, see 3 & 4 Will. IV. c. 54, ss. 12, 15.

(*b*) If the ship has received foreign repairs exceeding 20*s.* to the ton, the master must report it. See 3 & 4 Will. IV. c. 55, s. 7.

(*c*) See ss. 58, 59, 60; also 3 & 4 Will. IV. c. 54, s. 21.

(*d*) For departure of ship with such goods, see ss. 78, 80, 81.

(*e*) See Regulations, sect. 35; also 3 and 4 Will. IV. cap. 57, ss. 14, 17.

(*f*) In what cases liable to duty, see Table, 5 & 6 Vict. c. 47.

(*g*) See sect. 3, and the 3 & 4 Will. IV. c. 93, s. 2, repealing certain matters respecting manifests of ships departing from places in China, &c.

Inwards.

Report.

3 & 4 Will. 4, c. 52.

the collector or controller, shall produce to him any bill or bills of lading, or a true copy thereof, for any and every part of the cargo laden on board; and shall answer all such questions relating to the ship and cargo, and crew and voyage, as shall be put to him by such collector or controller; and in case of failure or refusal to produce such manifest, or to answer such questions, or to answer them truly, or to produce such bill of lading or copy, or if such manifest, or bill of lading, or copy shall be false, or if any bill of lading be uttered by any master, and the goods expressed therein shall not have been *bonâ fide* shipped on board such ship, or if any bill of lading uttered or produced by any master shall not have been signed by him, or any such copy shall not have been received or made by him, previously to his leaving the place where the goods expressed in such bill of lading or copy were shipped, then and in every such case such master shall forfeit the sum of one hundred pounds."

bill of lading or copy;

and answer questions as to voyage. On failure, master to forfeit 100*l.*

Sect. 12. "That if any part of the cargo of any ship for which a manifest is required be reported for importation at some other port in the United Kingdom, or at some other port in the Isle of Man respectively, the collector and controller of the port at which some part of the cargo has been delivered, shall notify such delivery on the manifest, and return the same to the master of such ship."

Part of cargo reported for another port.

Sect. 13. "That every ship shall come as quickly up to the proper place of mooring or unlading as the nature of the port will admit, and without touching at any other place; and in proceeding to such place shall bring to at stations (*a*) appointed by the commissioners of his Majesty's Customs for the boarding of ships by the officers of the Customs; and after arrival at such place of mooring or unlading such ship shall not remove from such place except directly to some other proper place, and with the knowledge of the proper officer of the Customs, on penalty of one hundred pounds, to be paid by the master of such ship: provided always, that it shall be lawful for the commissioners of his Majesty's Customs to appoint places to be the proper places for the mooring or unlading of ships importing tobacco, and where such ships only shall be moored or unladen; and in case the place so appointed for the unlading of such ships shall not be within some dock surrounded with walls, if any such ship after having been discharged shall remain at such place, or if any ship not importing tobacco shall be moored at such place, the master shall in either case forfeit and pay the sum of twenty pounds."

Ship to come quickly to place of unlading, but to bring to at stations for boarding officers.

Mooring places for tobacco ships.

Sect. 14. "That it shall be lawful for the proper officers of the Customs to board (*b*) any ship arriving at any port in the United Kingdom or in the Isle of Man, and freely to stay on board until all the goods laden therein shall have been duly delivered from the same; and such officers shall have free access (*c*) to every part of the ship, with power to fasten down hatchways, and to mark any goods before landing, and to lock up, seal, mark, or otherwise secure any goods on board such ship; and if any place, or any box or chest, be locked, and the keys be withheld, such officers, if they be of a degree superior to tidesmen or watermen, may open any such place, box, or chest in the best manner in their power; and if they be tidesmen or watermen, or only of that degree, they shall send for their superior officer, who may open or cause to be opened any such place, box, or chest in the best manner in his power (*d*); and if any goods be found concealed on board any such ship, they shall be forfeited; and if the officers shall place any lock,

Officers to board ships,

to have free access to all parts,

may seal or secure goods,

may open locks.

Goods concealed forfeited

(*a*) For penalty on failure, see sect. 135.

(*b*) See sect. 136.

(*c*) See also 3 & 4 Will. IV. c. 53, s. 34; and as to places of concealment, see same act, sect. 14.

(*d*) It was held under 15 Geo. II. c. 25, that a Custom-house officer had no right to regauge. *Rice* v. *Denton*, Lofft, 204.

Inwards.

Entry.

3 & 4 Will. 4, c. 52.

If seal, &c. be broken, master to forfeit 100*l.*

National ships, British or foreign, having goods on board, person in charge to deliver an account, or forfeit 100*l.*

mark, or seal upon any goods on board, and such lock, mark, or seal be wilfully opened, altered, or broken before due delivery of such goods, or if any of such goods be secretly conveyed away, or if the hatchways, after having been fastened down by the officer, be opened, the master of such ship shall forfeit the sum of one hundred pounds."

Sect. 15 provides and enacts, "That if any ship (having commission from his Majesty, or from any foreign prince or state) arriving as aforesaid at any port in the United Kingdom or in the Isle of Man, shall have on board any goods laden in parts beyond the seas, the captain, master, purser, or other person having the charge of such ship or of such goods for that voyage, shall, before any part of such goods be taken out of such ship, or when called upon so to do by any officer of the Customs, deliver an account in writing under his hand, to the best of his knowledge, of the quality and quantity of every package or parcel of such goods, and of the marks and numbers thereon, and of the names of the respective shippers and consignees of the same, and shall make and subscribe a declaration at the foot of such account, declaring to the truth thereof, and shall also truly answer to the collector or controller such questions concerning such goods as shall be required of him; and on failure thereof such captain, master, purser, or other person shall forfeit the sum of one hundred pounds; and all such ships shall be liable to such searches as merchant ships are liable to; and the officers of the Customs may freely enter and go on board all such ships, and bring from thence on shore into the King's warehouse any goods found on board any such ship as aforesaid; subject nevertheless to such regulations in respect of ships of war belonging to his Majesty as shall from time to time be directed in that respect by the commissioners of his Majesty's treasury of the United Kingdom of Great Britain and Ireland."

Such ships liable to search, under regulations of treasury

Master to deliver list of crew of ships from West Indies (*a*).

Sect. 16. "That the master of every British ship arriving at any port in the United Kingdom, on her return from any British possessions in the West Indies, shall, within ten days of such arrival, deliver to the collector or controller a list, containing the names and descriptions of the crew which was on board at the time of clearing from the United Kingdom, and of the crew on board at the time of arrival in any of the said possessions, and of every seaman who has deserted or died during the voyage, and also the amount of wages due at the time of his death to each seaman so dying, and shall make and subscribe a declaration at the foot of such list, declaring to the truth thereof; and every master omitting so to do shall forfeit the sum of fifty pounds; and such list shall be kept by the collector for the inspection of all persons interested therein."

Penalty on neglect, 50*l.* List kept by collector.

Entry.

After 14 days officer may land goods not entered, and certain goods before 14 days.

Remnant of cargo and all small packages may be landed by officers.

Duties and charges not paid

Sect. 17. "That every importer of any goods shall, within fourteen days after the arrival of the ship importing the same, make perfect entry inwards of such goods, or entry by bill of sight (*b*), in manner hereinafter provided, and shall within such time land the same (*c*): and in default of such entry and landing, it shall be lawful for the officers of the Customs to convey such goods to the King's warehouse: and whenever the cargo of any ship shall have been discharged, with the exception only of a small quantity of goods, it shall be lawful for the officers of the Customs to convey such remaining goods, and at any time to convey any small packages or parcels of goods to the King's warehouse, although such fourteen days shall not have expired, there to be kept waiting the due entry thereof during the remainder of such fourteen days; and if the duties due upon any goods so conveyed to

(*a*) As to delivering lists of crews, &c. in ships from China, see *ante*, p. 497, note (*a*).

(*b*) See sect. 24.

(*c*) See sect. 57.

Inwards.

Entry.

3 & 4 Will. 4, c. 52.

the King's warehouse shall not be paid within three months after such fourteen days shall have expired, together with all charges of removal and warehouse rent (*a*), the same shall be sold, and the produce thereof shall be applied, first to the payment of freight and charges, next of duties, and the overplus, if any, shall be paid to the proprietor of the goods."

in three months, goods may be sold.

Sect. 18. "That the person entering any goods inwards (whether for payment of duty, or to be warehoused upon the first perfect entry thereof, or for payment of duty upon the taking out of the warehouse, or whether such goods be free of duty), shall deliver to the collector or controller a bill of the entry of such goods, fairly written in words at length (*b*), expressing the name of the ship, and of the master of the ship in which the goods were imported, and of the place from whence they were brought, and the description and situation of the warehouse, if they are to be warehoused, and the name of the person in whose name the goods are to be entered, and the quantity and description of the goods, and the number and denomination or description of the respective packages containing the goods, and in the margin of such bill shall delineate the respective marks and numbers of such packages, and shall pay down any duties which may be payable upon the goods mentioned in such entry; and such person shall also deliver at the same time two or more duplicates, as the case may require, of such bill, in which all sums and numbers may be expressed in figures, and the particulars to be contained in such bill shall be written and arranged in such form and manner, and the number of such duplicates shall be such as the collector and controller shall require; and such bill being duly signed by the collector and controller, and transmitted to the landing-waiter, shall be the warrant to him for the landing or delivering of such goods."

Bill of entry to be delivered.

Particulars.

Duplicates.

Bill of entry signed shall be the warrant.

Sect. 19. "That every person who shall make or cause to be made any such entry inwards of any goods, not being duly authorized thereto by the proprietor or consignee of such goods, shall for every such offence forfeit the sum of one hundred pounds: provided always, that no such penalty shall extend or be deemed to extend to any person acting under the directions of the several dock companies or other corporate bodies authorized by law to pass entries."

Unauthorized persons not to be permitted to make entries.

Not to extend to dock companies.

Sect. 20. "That no entry, nor any warrant for the landing of any goods, or for the taking of any goods out of any warehouse, shall be deemed valid, unless the particulars of the goods and packages in such entry shall correspond with the particulars of the goods and packages, purporting to be the same, in the report of the ship, and in the manifest, where a manifest is required, and in the certificate or other document, where any is required, by which the importation or entry of such goods is authorized, nor unless the goods shall have been properly described in such entry by the denominations, and with the characters and circumstances according to which such goods are charged with duty or may be imported, either to be used in the United Kingdom, or to be warehoused for exportation only; and any goods taken or delivered out of any ship, or out of any warehouse, or for the delivery of which, or for any order for the delivery of which, from any warehouse, demand shall have been made, not having been duly entered, shall be forfeited."

Not valid unless agreeing with manifest, report, and other documents,

and description of goods.

Goods not properly entered, forfeited.

Sect. 21. "That if the goods in such entry be charged to pay duty according to the number, measure, or weight thereof, such number, measure, or weight shall be stated in the entry; and if the goods in such entry be charged to pay duty according to the value thereof, such value shall be stated in the entry, and shall be affirmed by the declaration of the importer or his known agent, written upon the entry, and attested by his signature; and if the goods in such entry be chargeable at the

Goods by number, measure, or weight.

Goods *ad valorem*.

Declaration of value.

(*a*) See sect. 137.

(*b*) By the 1 & 2 Vict. c. 113, s. 3, such bills and duplicates may be either fairly written, or fairly printed in part, and fairly written in part.

Inwards.

Entry.

3 & 4 Will. 4, c. 52. Persons not authorized to declare the value to forfeit 100*l.*

option of the officers of Customs, either according to the number, measure, or weight thereof, or according to the value thereof (*a*), then as well such number, measure, or weight, as also such value, shall be in like manner stated in the entry and attested; and if any person make such declaration, not being the importer or proprietor of such goods, nor his agent duly authorized by him, such person shall forfeit the sum of one hundred pounds; and such declaration shall be made in manner and form following, and shall be binding upon the person by or in behalf of whom the same shall be made; (that is to say),

Form of declaration.

"*I*, A. B. *of* [Place of Abode] *do hereby declare, that I am* [*the importer*, or *authorized by the importer*] *of the goods contained in this entry, and that I enter the same* [stating which, if part only] *at the sum of*
Witness my hand the day of A. B."

Goods undervalued, officers may detain.

Sect. 22. "That if upon examination (*b*) it shall appear to the officers of the Customs that such goods are not valued according to the true value thereof, it shall be lawful for such officers to detain and secure such goods, and (within five days from the landing thereof if it be in the ports of London, Leith, or Dublin, or within seven days if in any other port in the United Kingdom, or if in any port in the Isle of Man) to take such goods for the use of the Crown (*c*); and if a different rate of duty shall be charged upon any goods according as the value of the same shall be described in the entry to be above or to be below any particular price or sum (*d*), and such goods shall be valued in the entry so as to be liable to the lower rate of duty, and it shall appear to the officers of the Customs that such goods, by reason of their real value, are properly liable to the higher rate of duty, it shall be lawful for such officers in like manner to take such goods for the use of the Crown; and the commissioners of his Majesty's Customs shall thereupon in any of such cases cause the amount of such valuation, together with an addition of ten pounds *per centum* thereon, and also the duties paid upon such entry, to be paid to the importer or proprietor (*e*) of such goods in full satisfaction for the same, and shall dispose of such goods for the benefit of the Crown; and if the produce of such sale shall exceed the sums so paid and all charges incurred by the Crown, one moiety of the overplus shall be given to the officer or officers who had detained and taken the goods; and the money retained for the benefit of the Crown shall be paid into the hands of the collector of the Customs, with the knowledge of the controller, and carried to account as duties of Customs" (*f*).

Valuation and 10*l.* per cent. to be paid importer.

Goods to be sold for benefit of Crown.

East India Company to sell goods.

Sect. 23 provides and enacts, "That the value of goods imported by the East India Company shall be ascertained by the gross price at which the same shall have been sold by auction at the public sales of the said company; and that the said company shall fairly and openly expose to sale and cause to be sold all such goods so charged to pay duty according to the value thereof by way of public auction in the city of London, within three years from the importation thereof, and shall give due notice at the Custom House in London to the officers appointed to attend such sales, of the time and place thereof" (*g*).

(*a*) *e. g.* Silk goods, see Table of Duties, 5 & 6 Vict. c. 47, *post*, "Section IV."

(*b*) Officers may take samples, see sect. 124.

(*c*) Power to restore, see sect. 133.

(*d*) *e. g.* Turpentine, see Table of Duties, 5 & 6 Vict. c. 47, *post*, "Section IV."

(*e*) But see forfeiture of detached parts of articles, Table, sect. 58.

(*f*) Further provision for the detention of goods under the above circumstances is made by sect. 15 of the 5 & 6 Vict. c. 47; see *post*.

(*g*) Although the 3 & 4 Will. IV. c. 93, has thrown open the China trade "to all his Majesty's subjects," of course this section still applies to all goods imported by the East India Company.

Inwards.

Entry.

3 & 4 Will. 4, c. 52.

Bill of sight if goods be not known;

Sect. 24. "That if the importer of any goods, or his agent after full conference with him, shall declare before the collector or controller, that he cannot for want of full information make a full or perfect entry of such goods, and shall make and subscribe a declaration to the truth thereof, it shall be lawful for the collector and controller to receive an entry by bill of sight for the packages or parcels of such goods by the best description which can be given, and to grant a warrant thereupon, in order that the same may be provisionally landed, and may be seen and examined by such importer, in presence of the proper officers; and within three days after any goods shall have been so landed, the importer shall make a full or perfect entry thereof, and shall either pay down all duties which shall be due and payable upon such goods, or shall duly warehouse the same, according to the purport of the full or perfect entry or entries so made for such goods, or for the several parts or sorts thereof: provided always, that if when full or perfect entry be at any time made for any goods provisionally landed as aforesaid by bill of sight, such entry shall not be made in manner hereinbefore required for the due landing of goods, such goods shall be deemed to be goods landed without due entry thereof, and shall be subject to the like forfeiture accordingly: provided also, that if any sum of money shall have been deposited upon any entry by bill of sight, on account of the duties which may be found to be payable on the goods intended therein, it shall be lawful for the officers of the Customs to deliver, in virtue of the warrant for landing the same, any quantity of goods the duty on which shall not exceed the sum so deposited."

Importer to examine, and make perfect entry in three days,

Sect. 25. "That in default of perfect entry within such three days, such goods shall be taken to the King's warehouse by the officers of the Customs; and if the importer shall not, within one month after such landing, make perfect entry or entries of such goods, and pay the duties thereon, or on such parts as can be entered for home use, together with charges of removal and of warehouse rent, such goods shall be sold for the payment of such duties (or for exportation, if they be such as cannot be entered for home use, or shall not be worth the duties and charges), and for the payment of such charges; and the overplus, if any, shall be paid to the importer or proprietor thereof."

Or goods to be taken to King's warehouse; and in one month may be sold.

Sect. 26 provides and enacts, "That it shall be lawful for the East India Company, without making the proof hereinbefore required, to enter by bill of sight, to be landed and secured in such manner as the commissioners of his Majesty's Customs shall require, any goods imported by them, and also any goods imported by any other person from places within the limits of the charter of the said company, with the consent of such person, upon condition to cause perfect entry to be made of such goods within three months from the date of the importation thereof, either to warehouse the same, or to pay the duties thereon within the times and in the manner hereinafter mentioned; (that is to say), if such goods be charged to pay duty according to the value, then to pay such duty within four months from the sale of the goods; and if such goods be charged to pay duty according to the number, measure, or weight thereof, then to pay one moiety of such duties within six calendar months from the time of the importation of such goods, and the other moiety within twelve calendar months from such time; and such goods shall be secured in such places and in such manner as the commissioners of his Majesty's Customs shall require, until the same shall have been duly entered, and the duties thereon shall have been duly paid, or until the same shall have been duly exported: Provided also, that it shall be lawful for any other person who shall have imported any goods from places within the said limits into the port of London, in like manner to enter such goods by bill of sight in his own name, upon giving sufficient security by bond, to the satisfaction of the commissioners of his Majesty's Customs, with the like conditions as are required of the said company, for making perfect entries, and for the

East India Company may enter by bill of sight, and make perfect entry within three months.

Ad valorem duties.

Rated duties.

Private importers may enter as the company may, on bond, provided goods be secured in company's warehouses.

Inwards.

Entry.

3 & 4 Will. 4, c. 52.

In default of payment of duties, goods to be sold.

securing and the paying of duties, provided such goods be entered by such bill of sight to be warehoused in some warehouse, under the superintendence of the said company, and in which goods imported by the said company may be secured in manner before mentioned" (*a*).

Sect. 27. "That in default of perfect entry within three months as aforesaid (*b*), or of due entry and payment of duty within the times and in the manners hereinbefore respectively required, it shall be lawful for the commissioners of his Majesty's Customs to cause any such goods in respect of which such default shall have been made, to be sold for the payment of such duties, (or for exportation, if they be such as cannot be entered for home use), and for the payment of all charges incurred by the Crown in respect of such goods; and the overplus, if any, shall be paid to the proprietor thereof."

Goods landed by bill of sight fraudulently concealed, forfeited.

Sect. 28. "That where any package or parcel shall have been landed by bill of sight, and any goods or other things shall be found in such package or parcel, concealed in any way, or packed with intent to deceive the officers of his Majesty's Customs, as well all such goods and other things, as the package or parcel in which they are found, and all other things contained in such package or parcel, shall be forfeited."

East India Company to pay duties to receiver general.

Sect. 29. "That the East India Company shall pay into the hands of the receiver general of the Customs every sum of money due from the said company on account of the duties of Customs, at the respective times when the same shall become due; and that the said receiver general shall give to the said company a receipt for the monies so paid, on the account of the collector of the Customs, which receipt, when delivered to such collector, shall be received by him as cash."

Goods damaged on voyage,

Abatement of duties

Proof by master and importer.

When claim to be made

Sect. 30. "That if any goods which are rated to pay duty according to the number, measure, or weight thereof (except certain goods hereinafter mentioned (*c*)), shall receive damage during the voyage, an abatement of such duties shall be allowed in proportion to the damage so received; provided proof be made to the satisfaction of the commissioners of his Majesty's Customs, or of any officers of Customs acting therein under their directions, that such damage was received after the goods were shipped abroad in the ship importing the same, and before they were landed in the United Kingdom; and provided claim to such abatement of duties be made at the time of the first examination of such goods."

Officers to examine damage, and state proportion, or choose two merchants to s damage.

Sect. 31. "That the officers of the Customs shall thereupon examine such goods with reference to such damage, and may state the proportion of damage which, in their opinion, such goods have so received, and may make a proportionate abatement of duties; but if the officers of Customs be incompetent to estimate such damage, or if the importer be not satisfied with the abatement made by them, the collector and controller shall choose two indifferent merchants experienced in the nature and value of such goods, who shall examine the same, and shall make and subscribe a declaration, stating in what proportion, according to their judgment, such goods are lessened in their value by reason of such damage, and thereupon the officers of Customs may make an abatement of the duties according to the proportion of damage so declared by such merchants."

No abatement for certain goods.

Sect. 32. "That no abatement of duties shall be made on account of any damage received by any of the sorts of goods hereinafter enumerated; (that is to say), cocoa (*d*), coffee (*d*), oranges, pepper (*d*), currants, raisins, figs, tobacco (*d*), lemons, and wine." (Nor "tea," by

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(*a*) This must be understood now only in accordance with the altered position of the East India Company, (see the 3 & 4 Will. IV. c. 93), the trade now being thrown open.

(*b*) See sect. 24.

(*c*) See sect. 32.

(*d*) As to abandonment of damaged parts, see 3 & 4 Will. IV. c. 57, s. 33.

the 3 & 4 Will. IV. c. 101, s. 4; nor "sugar," by the 5 & 6 Vict. c. 47, s. 14.)

Inwards.

Entry.

3 & 4 Will 4, c. 52.

Sect. 33. "That it shall be lawful to re-import into the United Kingdom from any place, in a ship of any country, any goods (except as hereinafter (*a*) excepted) which shall have been legally exported from the United Kingdom, and to enter the same by bill of store (*b*), referring to the entry outwards, and exportation thereof, provided the property in such goods continue in the person by whom or on whose account the same have been exported, and that such re-importation take place within six years from the date of the exportation; and if the goods so returned be foreign goods, which had before been legally imported into the United Kingdom, the same duties shall be payable thereon as would, at the time of such re-importation, be payable on the like goods under the same circumstances of importation as those under which such goods had been originally imported, or such goods may be warehoused as the like goods might be warehoused upon a first importation thereof; provided always, that the several sorts of goods enumerated or described in the table following shall not be re-imported into the United Kingdom for home use upon the ground that the same had been legally exported from thence, but that the same shall be deemed to be foreign goods, whether originally such or not, and shall also be deemed to be imported for the first time into the United Kingdom; (that is to say),

Returned goods; entered by bill of store; if property be not changed;

if foreign goods, duties to be paid again;

or goods may be warehoused.

Certain goods may not be returned for home use.

A TABLE OF GOODS EXPORTED WHICH MAY NOT BE RE-IMPORTED FOR HOME USE.

Corn, grain, meal, flour, and malt.
Hops.
Tobacco. (But now by sect. 8 of the 5 & 6 Vict. c. 47, it may be re-imported into the United Kingdom by bill of store.)
Tea.
Goods for which any bounty or any drawback of excise had been received on exportation, unless by special permission of the commissioners of his Majesty's Customs, and on repayment of such bounty or such drawback.
All goods for which bill of store cannot be issued in manner hereinafter directed, except small remnants of British goods by special permission of the commissioners of his Majesty's Customs, upon proof to their satisfaction that the same are British, and had not been sold.

Sect. 34. "That the person in whose name any goods so re-imported were entered for exportation shall deliver to the searcher at the port of exportation an exact account, signed by him, of the particulars of such goods, referring to the entry and clearance outwards and to the return inwards of the same, with the marks and numbers of the packages, both inwards and outwards; and thereupon the searcher, finding that such goods had been legally exported, shall grant a bill of store for the same; and if the person in whose name such goods were entered for exportation was not the proprietor thereof, but his agent, he shall declare upon oath on such bill of store the name of the person by whom he was employed as such agent; and if the person to whom such returned goods are consigned shall not be such proprietor and exporter, he shall make and subscribe a declaration on such bill of store of the name of the person for whose use such goods have been consigned to him; and the real proprietor, ascertained to be such, shall make and subscribe a declaration upon such bill of store, to the identity of the goods so ex-

Bill of store, by whom may be taken out;

to be issued by searcher.

Agent to declare name of his employer.

Consignee to declare who is proprietor.

Proprietor to declare to identity, and property unchanged;

(*a*) See table at the end of this section.

(*b*) See sect 34. Tobacco may now be re-imported by bill of store, by the 5 & 6 Vict c. 47, s. 8.

Inwards.

Entry.

3 & 4 Will. 4, c. 59. then entry by bill of store to be granted.

ported and so returned, and that he was at the time of exportation and of re-importation the proprietor of such goods, and that the same had not during such time been sold or disposed of to any other person; and such declaration shall be made before the collectors or controllers at the ports of exportation and of importation respectively; and thereupon the collector and controller shall admit such goods to entry by bill of store, and grant their warrant accordingly."

Surplus stores subject as goods;

Sect. 35. "That the surplus stores (*a*) of every ship arriving from parts beyond the seas, in the United Kingdom or in the Isle of Man, shall be subject to the same duties, and the same prohibitions, restrictions, and regulations, as the like sorts of goods shall be subject to when imported by way of merchandize; but if it shall appear to the collector and controller that the quantity or description of such stores is not excessive or unsuitable, under all the circumstances of the voyage, it shall be lawful for them to permit such surplus stores to be entered for the private use of the master, purser, or owner of such ship, or of any passenger of such ship to whom any such surplus stores may belong, on payment of the proper duties, or to be warehoused (*b*) for the future use of such ship, although the same could not be legally imported by way of merchandize."

If not excessive, may be entered for private use; or be warehoused for use of the ship.

Goods from plantations; Master to deliver plantation clear-

Sect. 36. "That no goods shall be entered as being of or from any British possession in America (if any benefit attach to such distinction) unless the master of the ship importing the same shall have delivered to the collector or controller a certificate, under the hand of the proper officer of the place where such goods were taken on board, of the due clearance (*c*) of such ship from thence, containing an account of such goods."

Certificate of growth of sugar, coffee, cocoa, spirits, from plantations.

Sect. 37. "That before any sugar, coffee, cocoa, or spirits shall be entered as being of the produce of some British possession in America, or the Island of Mauritius, the master of the ship importing the same shall deliver to the collector or controller a certificate under the hand of the proper officer of the place where such goods were taken on board, testifying that proof had been made in manner required by law (*d*) that such goods are of the produce of some British possession in America, or of the Island of Mauritius, stating the name of the place where such goods were produced, and the quantity and quality of the goods, and the number and denomination of the packages containing the same, and the name of the ship in which they are laden, and of the master thereof; and such master shall also make and subscribe a declaration before the collector or controller, that such certificate was received by him at the place where such goods were taken on board, and that the goods so imported are the same as are mentioned therein."

Master to declare to certificate.

Certificate of sugar from limits of charter;

Sect. 38. "That before any sugar shall be entered as being the produce of any British possession within the limits of the East India Company's charter, the master of the ship importing the same shall deliver to the collector or controller a certificate under the hand and seal of the proper officer at the place where such sugar was taken on board, testi-

(*a*) Must be reported, see sect. 8.

(*b*) See also 3 & 4 Will. IV. c. 57, ss. 14, 17.

(*c*) See 3 & 4 Will. IV. c. 59, s. 17, extended, from and after the 5th July, 1843, to all goods coming from any British possessions abroad, except the presidencies of Fort William in Bengal, Fort Saint George and Bombay. See 5 & 6 Vict. c. 47, s. 17.

(*d*) See the 3 & 4 Will. IV. c. 59, s. 29, as to the form &c. of such certificate; and c. 30, as to certificate of production on re-exportation; and see also s. 8 of the same act, as to such articles imported from colonies into which the like articles of foreign production are not prohibited to be imported. But see the 5 & 6 Vict. c. 47, s. 28, requiring a certificate of production upon such exportation and importation for *any* goods whatever, &c.

Inwards.

Entry.

3 & 4 Will 4, c. 52.

fying that oath (*a*) had been made before him, by the shipper of such sugar, that the same was really and *bonâ fide* the produce of such British possession; and such master shall also make and subscribe a declaration before the collector or controller that such certificate was received by him at the place where such sugar was taken on board, and that the sugar so imported is the same as is mentioned therein."

Master to declare to certificate.

Sect. 39. "That before any wine shall be entered as being the produce of the Cape of Good Hope, the master of the ship importing the same shall deliver to the collector or controller a certificate under the hand of the proper officer of the Cape of Good Hope testifying that proof had been made, in manner required by law (*b*), that such wine is of the produce of the Cape of Good Hope, or the dependencies thereof, stating the quantity and sort of such wine, and the number and denomination of the packages containing the same; and such master shall also make and subscribe a declaration before the collector or controller, that such certificate was received by him at the Cape of Good Hope, and that the wine so imported is the same as is mentioned therein."

Certificate of wine, produce of Cape of Good Hope;

Master to declare to certificate.

Sect. 40. "That it shall be lawful to import into the United Kingdom any goods of the produce or manufacture of the islands of Guernsey, Jersey, Alderney, Sark, or Man, from the said islands respectively, without payment of any duty (except in the cases hereinafter mentioned); and that such goods shall not be deemed to be included in any charge of duties imposed by any act hereafter to be made on the importation of goods (*c*) generally from parts beyond the seas; provided always, that such goods may nevertheless be charged with any proportion of such duties as shall fairly countervail any duties of excise, or any coast duty, payable on the like goods the produce of the part of the United Kingdom into which they shall be imported: provided also, that such exemption from duty shall not extend to any manufactures of the said islands made from materials the produce of any foreign country, except manufactures of linen and cotton made in and imported from the Isle of Man" (*c*).

Goods of Guernsey, Jersey, &c. duty free; with exceptions.

Master to deliver certificate of produce, and declare to certificate.

Sect. 41. "That before any goods shall be entered as being the produce of the said islands (if any benefit attach to such distinction), the master of the ship or vessel importing the same shall deliver to the collector or controller a certificate from the governor, lieutenant governor, or commander in chief of the island from whence such goods were imported, that proof had been made, in manner required by law (*d*), that such goods were of the produce of such island, stating the quantity and quality of the goods, and the number and denomination of the packages containing the same; and such master shall also make and subscribe a declaration before the collector or controller, that such certificate was received by him at the place where such goods were taken on board, and that the goods so imported are the same as are mentioned therein."

Treasury may permit produce of colonial fisheries to be imported from Guernsey, &c.

Sect. 42. "That it shall be lawful for the lords commissioners of His Majesty's treasury, when and so long as they shall see fit, to permit any goods the produce of the British possessions or fisheries in North America, which shall have been legally imported into the Islands of Guernsey or Jersey direct from such possessions, to be imported into the United Kingdom for home use direct from those islands, under such

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(*a*) See 3 & 4 Will. IV. c. 59, s. 83; also 5 & 6 Vict. c. 47, s. 28.

(*b*) See 3 & 4 Will. IV. c. 59, s. 85; also 5 & 6 Vict. c. 47, s 28.

(*c*) By the 1 & 2 Vict. c. 113, s. 4, extended as well to the *materials* of which such goods are manufactured, as to duties upon the articles mentioned in the proviso in this section so extended. See 5 & 6 Vict. c. 47, s. 45, *post*, "Section IV."

(*d*) As to Guernsey, &c. see 3 & 4 Will. IV. c. 59, s. 86; and as to Isle of Man, see 3 & 4 Will. IV. c. 60, s. 15; but see also the 5 & 6 Vict. c. 47, s. 28.

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regulations as the said commissioners shall direct, any thing in the law of navigation to the contrary notwithstanding" (*a*).

3 & 4 Will. 4, c. 52. Vessels with stone from Guernsey, &c. not to be piloted

Sect. 43. "That no vessel arriving on the coast of England from Guernsey, Jersey, Alderney, Sark, or Man, wholly laden with stone the production thereof, shall be liable to be conducted or piloted by pilots appointed and licensed by the corporation of the Trinity House of Deptford Strond, any law, custom, or usage to the contrary notwithstanding."

Fish, British taking and curing, and lobsters and turbots, free of duty on importation.

Sect. 44. "That fresh fish of every kind, of British taking and imported in British ships, and fresh lobsters and turbots, however taken or in whatever ship imported (*b*), and cured fish of every kind, of British taking and curing, imported in British ships, shall be imported free of all duties, and shall not be deemed to be included in any charge of duty imposed by any act hereafter to be made on the importation of goods generally: provided always, that before any cured fish shall be entered free of duty, as being of such taking and curing, the master of the ship importing the same shall make and subscribe a declaration before the collector or controller, that such fish was actually caught and taken in British ships, and cured by the crews of such ships, or by His Majesty's subjects."

Declaration of master

Certificate of blubber, oil, &c. British colonial taking.

Sect. 45. "That before any blubber, train oil, spermaceti oil, head matter, or whale fins shall be entered as being the produce of fish or creatures living in the sea, taken and caught wholly by his Majesty's subjects usually residing in some part of his Majesty's dominions, and imported from some British possession, the master of the ship importing the same shall deliver to the collector or controller a certificate under the hand of the proper officer of such British possession where such goods were taken on board, (or if no such officer be residing there, then a certificate under the hands of two principal inhabitants at the place of shipment), notifying that oath had been made before him or them, by the shipper of such goods, that the same were the produce of fish or creatures living in the sea taken wholly by British vessels owned and navigated according to law; and such master shall also make and subscribe a declaration before the collector or controller, that such certificate was received by him at the place where such goods were taken on board, and that the goods so imported are the same as mentioned therein; and the importer of such goods shall also make and subscribe a declaration before the collector or controller, at the time of entry, that to the best of his knowledge and belief the same were the produce of fish or creatures living in the sea taken wholly by British vessels in manner aforesaid" (*c*).

Declaration of master and importer.

Blubber, oil, &c. of British fishing, imported from the fishery.

Sect. 46. "That before any blubber, train oil, spermaceti oil, head matter, or whale fins (*c*), imported direct from the fishery, shall be entered as being the produce of fish or creatures living in the sea taken and caught wholly by the crews of ships cleared out from the United Kingdom, or from one of the islands of Guernsey, Jersey, Alderney, Sark, or Man, the master of the ship importing such goods shall make and subscribe a declaration, and the importer of such goods (to the best of his knowledge and belief) shall make and subscribe a declaration, that the same are the produce of fish or creatures living in the sea taken and caught wholly by the crew of such ship, or by the crew of some other ship (naming the ship) cleared out from the United Kingdom, or from one of the islands of Guernsey, Jersey, Alderney, Sark, or Man (stating which)."

Declaration of master and importer.

Blubber from Greenland may be boiled and entered as oil imported, and be exported as such.

Sect. 47. "That it shall be lawful upon the return of any ship from the Greenland seas or Davis's Straits to the United Kingdom with any blubber, being the produce of whales or other creatures living in the

(*a*) See 3 & 4 Will. IV. c. 54, s. 3; and 5 & 6 Vict. c. 47, s. 30.

(*b*) See sect. 2; also 5 & 6 Vict. c. 47, ss. 5, 30.

(*c*) 5 & 6 Vict. c. 47, s. 28.

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3 & 4 Will. 4, c. 52.

sea, for the importers thereof to cause the same to be boiled into oil at the port of importation, under the care and inspection of the proper officers of the Customs; and the oil so produced shall be admitted to entry, and the duties be paid thereon, as if imported in that state; and such oil shall not afterwards, if the same come to be exported, be subject to duty of exportation as a manufacture of the United Kingdom."

Importation direct.

Sect. 48. "That no goods shall be deemed to be imported from any particular place unless they be imported direct from such place, and shall have been there laden on board the importing ship, either as the first shipment of such goods, or after the same shall have been actually landed at such place."

Salvor may sell goods sufficient to defray salvage.

Sect. 49. "That it shall be lawful for the owner or salvor of any property liable to the payment of duty saved from sea, and in respect of which any sum shall have been awarded under any law at the time in force, or in respect of which any sum shall have been paid or agreed to be paid by the owner thereof or his agent, to the salvors, to defray the salvage of the same, to sell so much of the property so saved as will be sufficient to defray the salvage so awarded, or such other sum so paid or agreed to be paid; and that upon the production of an award made in execution of any such law to the commissioners of his Majesty's Customs, or upon proof to the satisfaction of the said commissioners that such sum of money has been paid, or has been agreed to be paid, the said commissioners are hereby empowered and required to allow the sale of such property aforesaid, free from the payment of all duties, to the amount of such sum so awarded, paid, or agreed to be paid, or to the amount of such other sum as to the said commissioners shall seem just and reasonable: provided always, that if such owner or salvor shall be dissatisfied with any determination of the said commissioners as to the amount of such property to be sold duty free, it shall be lawful for such owner or salvor to refer any such determination of the said commissioners to the judgment and revision of the high Court of Admiralty; and in that case such sale shall be suspended until the decision of such court shall have been had thereon."

Foreign goods, derelict, &c. to be subject to same duties as on importation.

Sect. 50. "That all foreign goods, derelict, jetsam, flotsam, and wreck (*a*) brought or coming into the United Kingdom or into the Isle of Man, shall at all times be subject to the same duties as goods of the like kind imported into the United Kingdom respectively are subject to: provided always, that if, for ascertaining the proper amount of duty so payable, any question shall arise as to the origin of any such goods, the same shall be deemed to be of the growth, produce, or manufacture of such country or place as the commissioners of his Majesty's Customs shall upon investigation by them determine: provided also, that if any such goods be of such sorts as are entitled to allowance for damage, such allowance shall be made under such regulations and conditions as the said commissioners shall from time to time direct: provided also, that all such goods as cannot be sold for the amount of duty due thereon shall be delivered over to the lord of the manor or other person entitled to receive the same, and shall be deemed to be unenumerated goods, and shall be liable to and be charged with duty accordingly" (*b*).

If not worth their duty, how to be treated.

(*a*) The 6 & 7 Will. IV. c. 60, s. 3, repeals the latter clause of this section; but provides that the commissioners of Customs may inquire into the extent of damage, and abate amount of duty accordingly. This abatement is now repealed by the 5 & 6 Vict. c. 47, s. 17, upon certain articles there enumerated. See *post*, "Section IV."

Spirits in small casks not to be meddled with except by officers. See 3 & 4 Will. IV. c. 53, ss. 71, 72.

(*b*) The word "wreck" in this clause is not to be understood in the limited sense of goods forfeited for want of due claim by the owner. The lord of the manor will be entitled to them as unenumerated goods, if they cannot be sold for the amount of duty, although claimed by the owner within a year and a day. *Barry* v. *Arnaud*, 2 P. & D. 633; and *see* tit. "*Wreck*."

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3 & 4 Will. 4, c. 55

Persons having such goods in possession, without notice liable to a penalty of 100*l.*

Sect. 51. "That if any person shall have possession of any such goods, either on land or within any port in the United Kingdom, and shall not give notice thereof to the proper officer of the Customs within twenty-four hours after such possession, or shall not on demand pay the duties due thereon, or deliver the same into the custody of the proper officer of the Customs, such person shall forfeit the sum of one hundred pounds; and if any person shall remove or alter in quantity or quality any such goods, or shall open or alter any package containing any such goods, or shall cause any such act to be done, or assist therein, before such goods shall be deposited in a warehouse in the custody of the officers of the Customs, every such person shall forfeit the sum of one hundred pounds; and in default of the payment of the duties on such goods within eighteen months from the time when the same were so deposited, the same may be sold in like manner and for the like purposes as goods imported may in such default be sold: provided always, that any lord of the manor having by law just claim to such goods, or if there be no such lord of the manor, then the person having possession of the same, shall be at liberty to retain the same in his own custody, giving bond, with two sufficient sureties, to be approved by the proper officer of the Customs, in treble the value of such goods, for the payment of the duties thereon at the end of one year and one day, or to deliver such goods to the proper officer of the Customs in the same state and condition as the same were in at the time of taking possession thereof."

Lord of manor or salvor may retain such goods on giving bond for payment of duties.

Goods under excise permit regulations.

Sect. 52—"And whereas it may be expedient to subject some sorts of goods imported into the United Kingdom to certain internal regulations and restraints after the full duties of Customs had been paid thereon, and to place such regulations and restraints under the management of the commissioners of Excise—enacts, that no goods which are subject to any regulations of Excise shall be taken or delivered out of the charge of the officers of Customs (although the same may have been duly entered with them, and the full duties due thereon may have been paid), until such goods shall also have been duly entered with the officers of Excise, and permit granted by them for delivery of the same, nor unless such permit shall correspond in all particulars with the warrant of the officers of the Customs: provided always, that such entry shall not be received by the officers of the Excise, nor such permit granted by them, until a certificate shall have been produced to them of the particulars of the goods, and of the warrant for the same, under the hand of the officers of the Customs who shall have the charge of the goods: provided also, that if upon any occasion it shall appear necessary, it shall be lawful for the proper officers of Excise to attend the delivery of such goods by the officers of the Customs, and to require that such goods shall be delivered only in their presence; and it shall be lawful for such officers of Excise, to count, measure, gauge, or weigh any such goods, and fully to examine the same, and to proceed in all respects relating to such goods in such manner as they shall be authorized or required by any act for the time being in force relating to the Excise."

Officers of Excise may attend delivery, and may examine the goods.

Commissioners of Customs may direct certain goods to be stamped.

Sect. 53—"And whereas by the laws now in force certain articles subject to an inland duty of Excise are required to be stamped, to denote the payment of such duty; and to prevent fraud in the evasion of such duty, it is expedient that foreign articles of a similar description, when imported into the United Kingdom, should be stamped with such mark or stamp as the commissioners of his Majesty's Customs may deem necessary, in order to distinguish the foreign from the British article—enacts, that it shall and may be lawful for the commissioners of his Majesty's Customs, and they are hereby authorized, after any goods have been entered at the Custom-house, and before the same shall be discharged by the officers, and delivered into the custody of the importer or his agent, to mark or stamp such goods in such manner

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and form as they may deem fit and proper for the security of the revenue, and by such officer as they shall direct and appoint for that purpose."

3 & 4 Will. 4, c. 52. Orders for stamping goods to be published in Gazette.

Sect. 54. "That every order made by the said commissioners of his Majesty's Customs in respect of marking or stamping any goods shall be published in the *London Gazette* and *Dublin Gazette*."

Penalty 200*l* on forging such stamps.

Sect. 55. "That if any person or persons shall at any time forge or counterfeit any mark or stamp to resemble any mark or stamp which shall be provided and used for the purposes of this act, or shall forge or counterfeit the impression of any such mark or stamp, or shall sell or expose to sale, or have in his, her, or their custody or possession, any goods with a counterfeit mark or stamp, knowing the same to be counterfeit, or shall use or affix any such mark or stamp, to any other goods required to be stamped as aforesaid other than that to which the same was originally affixed, all and every such offender or offenders, and his, her, or their aiders, abettors, and assistants, shall for every such offence forfeit and pay the sum of two hundred pounds."

Times and places for landing goods,

Sect. 56. "That no goods whatever (except diamonds, bullion, fresh fish of British taking and imported in British ships, and turbots and lobsters (*a*), shall be unshipped from any ship arriving from parts beyond the seas, or landed or put on shore, but only on days not being Sundays or holidays (*b*), and in the day-time, (that is to say), from the first day of September until the last day of March between sun-rising and sun-setting, and from the last day of March to the first day of September between the hours of seven of the clock in the morning and four of the clock in the afternoon; nor shall any goods, except as aforesaid, be so unshipped or landed unless in the presence or with the authority of the proper officer of the Customs; and such goods, except as aforesaid, shall be landed at one of the legal quays (*c*) appointed by his Majesty for the landing of goods, or at some wharf, quay, or place appointed by the commissioners of the Customs for the landing of goods by sufferance (*d*); and that no goods, except as aforesaid, after having been unshipped shall be transhipped, or after having been put into any boat or craft to be landed shall be removed into any other boat or craft previously to their being duly landed, without the permission or authority of the proper officer of the Customs."

in presence of officers, and at proper quays or wharfs.

Goods to be unshipped, &c. at the expense of importer.

Sect. 57. "That the unshipping, carrying, and landing of all goods, and the bringing of the same to the proper place after landing, for examination or for weighing, and the putting of the same into the scales, and the taking of the same out of and from the scales after weighing, shall be performed by or at the expense of the importer."

Prohibitions and restrictions absolute or modified.

Sect. 58. "That the several sorts of goods enumerated or described in the table following, denominated 'A Table of Prohibitions and Restrictions Inwards,' shall either be absolutely prohibited to be imported into the United Kingdom, or shall be imported only under the restrictions mentioned in such table, according as the several sorts of such goods are respectively set forth therein; (that is to say) (*e*),

Prohibitions and Restrictions.

A TABLE OF PROHIBITIONS AND RESTRICTIONS INWARDS.

A LIST of GOODS absolutely PROHIBITED to be IMPORTED.

Arms, ammunition, and utensils of war, by way of merchandize, except by license from his Majesty, for furnishing his Majesty's public stores only.

(*a*) See sect. 2; also 5 & 6 Vict c. 47, s. 5, which repeals so much of this act as permits turbot to be landed without entry. Also see sect. 30 of that act.

(*b*) See 3 & 4 Will. IV. c 51, s. 13.

(*c*) See sect. 139.

(*d*) See sect. 141.

(*e*) See ss. 59, 60, as to warehousing prohibited goods. See also Navigation Act, 3 & 4 Will. IV. c. 54, as to other prohibitions and restrictions. This list is further altered by the 5 & 6 Vict. c. 47. See *post*, "Section IV."

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Prohibitions and Restrictions.

3 & 4 Will. 4, c. 52.

Beef, fresh or corned or slightly salted (*a*).
Books: viz.
first composed or written or printed in the United Kingdom, and printed or reprinted in any other country, imported for sale, except books not reprinted in the United Kingdom within twenty years; or being parts of collections, the greater parts of which had been composed or written abroad (*b*).
Cattle, great (*a*).
Clocks and watches of any metal, impressed with any mark or stamp appearing to be or to represent any legal British assay, mark, or stamp, or purporting by any mark or appearance to be of the manufacture of the United Kingdom, or not having the name and place of abode of some foreign maker abroad visible on the frame and also on the face, or not being in a complete state, with all the parts properly fixed in the case.
Coin; *viz.*
—— False money, or counterfeit sterling.
—— Silver of the realm, or any money purporting to be such, not being of the established standard in weight or fineness.
Fish of foreign taking or curing, or in foreign vessels; except turbots (*c*) and lobsters, *stock fish*, live eels, anchovies, *sturgeon, botargo, and caviare* (*a*).
Gunpowder; except by license from his Majesty, such license to be granted for the furnishing his Majesty's stores only.
Lamb (*a*).
Malt.
Mutton (*a*).
Pork, fresh or corned or slightly salted (*a*).
Sheep (*a*).
Snuff-work.
Spirits from the Isle of Man.
Swine (*a*).
Tobacco stalks stripped from the leaf, whether manufactured or not.
Tobacco stalk flour.

LIST of GOODS subject to certain RESTRICTIONS on IMPORTATION.

China, goods from, unless by the East India Company, and into the port of London, during the continuance of their exclusive privileges of trade (*d*).
East India; goods of places within the limits of the East India Company's charter, unless into such ports as shall be approved of by the lords of the treasury, and declared by order in council to be fit and proper for such importation (*e*).
Gloves of leather, unless in ships of 70 (*f*) tons or upwards, and in packages containing 100 dozen pairs of such gloves.

(*a*) The prohibition on the importation of these articles is now removed by the 5 & 6 Vict. c. 47, s. 3. And by s. 4 of the same act all fish of foreign taking, except anchovies, eels, turbot and lobsters; and all train oil, blubber, spermaceti, oil, head matter, skins, bones, and fins, the produce of fish or creatures living in the sea, and of foreign taking, are prohibited to be imported, except under certain restrictions.

(*b*) This item is repealed by the 5 & 6 Vict. c. 47, s. 23; and in lieu thereof, sect. 24 prohibits the importation after 1st of April 1843 of all books, wherein the copyright exists, first composed, or written, or printed in the United Kingdom; but, by sect. 25, provided notice in writing of such copyright existing be given to the commissioners of Customs, &c.

(*c*) As to the regulations of times and landing of turbots of *foreign* taking or importing, see 5 & 6 Vict. c. 47, s. 5, which repeals them.

(*d*) By the 3 & 4 Will. IV. c. 85, s. 3, the exclusive right of trading with China by the East India Company ceased on 22nd April, 1834. And by the 3 & 4 Will. IV. c. 93, s. 2, the prohibitions upon the importation of goods, therefrom imposed by the 6 Geo. IV. c. 107, and the 6 Geo. IV. c. 114, were repealed from the same date.

(*e*) By sect. 2 of the 3 & 4 Will. IV. c. 93, all British subjects may carry on trade with any countries beyond the Cape of Good Hope to the Straits of Magellan.

(*f*) See 6 & 7 Will. 4, c. 60, s. 5, which enacts that goods may be imported in vessels of 60 tons.

Inwards.

Prohibitions and restrictions.

3 & 4 Will. 4, c. 52.

Hides, skins, horns, or hoofs, or any other part of cattle or beast, his Majesty may by order in council prohibit, in order to prevent any contagious distemper.

Parts of articles; *viz.*

——— Any distinct or separate part of any article not accompanied by the other part or all the other parts of such article, so as to be complete and perfect, if such article be subject to duty according to the value thereof.

Silk; manufactures of silk, being the manufactures of Europe, unless into the port of London, or into the port of Dublin direct from Bordeaux, or into the port of Dover direct from Calais, and unless in a ship or vessel of 70 tons or upwards, or into the port of Dover in a vessel of the burthen of 60 tons at least, with license of the commissioners of the Customs (*a*).

Spirits, not being perfumed or medicinal spirits, *viz.* all spirits, unless in ships of 70 tons or upwards (*b*).

——— Rum of and from the British plantations, if in casks, unless in casks containing not less than 20 gallons (*b*).

——— All other spirits, if in casks, unless in casks containing not less than 40 gallons (*c*).

Tea; unless from the place of its growth, and by the East India Company, and into the port of London, during the continuance of their exclusive privileges of trade (*d*).

Tobacco and Snuff (*e*); *viz.*

——— ——— unless in a ship of the burthen of 120 tons or upwards.

(*a*) By the 5 & 6 Vict. c. 47, s. 13, the right of importing and warehousing the above article is extended to the port of Southampton.

(*b*) To prevent the evasion of these restrictions by persons using cases, vessels, or other packages not being strictly casks, but available for the purposes of casks, the 4 & 5 Will. IV. c. 89, s. 8, enacted, "That the said restrictions shall be construed to apply to all cases, vessels, or packages whatsoever capable of containing liquids and not being glass bottles, in like manner as the same now apply to casks; and that such cases, vessels, or packages shall be, for the purposes of such restrictions, taken and deemed to be casks within the meaning of the said Act." By the 5 & 6 Vict. c. 47, s. 12, the above restrictions are further relaxed in respect of the importation of spirits in *stone bottles* not exceeding the size of quart bottles, such spirits, however, being really part of the cargo of the vessel in which the same are imported and included in the manifest, or other papers enumerating a description of the cargo of the said vessel.

(*c*) By the 6 & 7 Will. IV. c. 60, s. 4, this restriction is extended to spirits in casks of not less than twenty gallons.

(*d*) By the 3 & 4 Will. IV. c. 85, s. 3, the exclusive right of trading with the dominions of the Emperor of China, and of trading in tea (by the *East India Company*), was to cease from and after the 22nd of April, 1834. And by the 3 & 4 Will. IV. c. 93, intituled "An Act to regulate the Trade to China and India," amongst other things, by sect. 2, certain restrictions imposed by statutes 6 Geo. IV. c. 107, and 6 Geo. IV. c. 114, upon the importation of tea, were repealed. As to duties on tea, see the 3 & 4 Will. IV. c. 101, and the 5 & 6 Vict. c. 47; *post, Sect. IV. "Duties of Customs."*

(*e*) With respect to certain other alterations as to the importation of tobacco, viz. importing it by bill of store, see the 5 & 6 Vict. c. 47, s. 8; as to the manifest for, see s. 9; and as to drawback, see s. 10, *ante*, 510.

By the 4 & 5 Will. IV. c. 89, s. 7, these restrictions "shall not extend to any *tobacco* the produce of and imported direct from Mexico, or from the continent of South America, or from the islands of Saint Domingo and Cuba, in packages of not less than eighty pounds weight each." And by the 6 & 7 Will. IV. c. 60, s. 4, reciting that in the above list *tobacco and snuff* in certain cases are required to be imported in hogsheads, casks, chests, or cases, each of which shall contain of net tobacco or snuff 450 lbs. weight, enacts, "that the said restrictions shall not extend to any such tobacco or snuff in hogsheads, casks, chests, or cases, each of which shall contain of net tobacco or snuff 300 lbs. weight."

The recent New Tariff Act (the 5 & 6 Vict. c. 47) has again altered these restrictions; and by sect. 6 enacts, "that they shall not extend to negro-head tobacco, the produce of and imported from the United States of America, in packages of not less than 150 lbs. weight each, nor to any tobacco the produce of Mexico, Columbia, or the continent of South America, or the islands of Saint Domingo and Cuba, when imported from the ware-

Inwards.

Prohibitions and restrictions.

3 & 4 Will. 4, c. 54.

Tobacco and Snuff—*continued.*

——————— Tobacco of and imported from the state of Colombia, and made up in rolls, unless in packages containing at least 320 lbs. weight of such rolls.

——————— Segars, unless in packages containing 100 lbs. weight of segars.

——————— All other tobacco and snuff, unless in hogsheads, casks, chests, or cases, each of which shall contain of net tobacco or snuff at least 100 lbs. weight if from the East Indies, or 450 lbs. weight if from any other place, and not packed in bags or packages within any such hogshead, cask, chest, or case, nor separated nor divided in any manner whatever, except tobacco of the dominions of the Turkish empire, which may be packed in inward bags or packages, or separated or divided in any manner within the outward package, provided such outward package be a hogshead, cask, chest, or case, and contain 450 lbs. net at least.

——————— and unless the particular weight of tobacco or snuff in each hogshead, cask, chest, or case, with the tare of the same, be marked thereon (*a*).

——————— and unless into the ports of London, Liverpool, Bristol, Lancaster, Cowes, Falmouth, Whitehaven, Hull, Port Glasgow, Greenock, Leith, Newcastle-upon-Tyne, Plymouth, Belfast, Cork, Drogheda, Dublin, Galway, Limerick, Londonderry, Newry, Sligo, Waterford, and Wexford (*b*).

——————— or into some other port or ports which may hereafter be appointed for such purpose by the lords commissioners of his Majesty's treasury; such appointments in Great Britain being published in the *London Gazette*, and such appointments in Ireland being published in the *Dublin Gazette*.

——————— but any ship wholly laden with tobacco may come into the ports of Cowes or Falmouth to wait for orders, and there remain fourteen days, provided due report of such ship be made by the master with the collector or controller of such port.

And all goods from the Isle of Man, except such as be of the growth, produce, or manufacture thereof.

Forfeiture.

And if any goods shall be imported into the United Kingdom contrary to any of the prohibitions or restrictions mentioned in such table in respect of such goods, the same shall be forfeited (*c*).

But goods may be warehoused for exportation only, although prohibited.

Sect. 59. "That any goods of whatever sort may be imported into the United Kingdom to be warehoused under the regulations of any act in force for the time being for the warehousing of goods (*d*), without payment of duty at the time of the first entry thereof, or notwithstanding that such goods may be prohibited to be imported into the United Kingdom to be used therein, except the several sorts of goods enumerated or described in manner following; (that is to say), goods prohibited on account of the package in which they are contained, or the tonnage of the ship in which they are laden; tea and goods from China in other than British ships, or by other persons than the East India Company during the continuance of their exclusive privileges of trade; gunpowder, arms, ammunition, or utensils of war; dried or salted fish (*e*), not being stock fish; infected hides, skins, horns, hoofs, or any other part of any cattle or beast; counterfeit coin or tokens; books first com-

Exceptions.

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house in any British possession in America, in packages of not less than 80 lbs. weight each. (See *post, Sect. IV. "Duties of Customs."*

(*a*) This marking of the casks, &c., repealed by the 5 & 6 Vict. c. 47, s. 7.

(*b*) As to removal for the use of the navy, see *post*, sections 99, 100, & 101, and the 3 & 4 Will. IV. c. 57, s. 21.

(*c*) Subject of course to the recent alterations and amendments; and see sect. 132; and see 1 & 2 Vict. c. 113, s. 6, as to cutlery, &c., of foreign manufacture, having the name of British manufacturers upon them, declared forfeited; and see also s. 11 of the 5 & 6 Vict. c. 47, as to the importation of articles of foreign manufacture bearing names and marks of British manufacturers, declaring the same to be forfeited.

(*d*) See 3 & 4 Will. IV. c. 57; s. 4 of the 3 & 4 Will. IV. c. 56, as amended by the 5 & 6 Will. IV. c. 66, s. 4.

(*e*) By the 1 & 2 Vict. c. 113, s. 7, the prohibition of the importation of dried or salted fish to be warehoused is repealed.

posed or written or printed and published in the United Kingdom, and reprinted in any other country or place; copies of prints first engraved, etched, drawn, or designed in the United Kingdom; copies of casts of sculptures or models first made in the United Kingdom; clocks or watches, being such as are prohibited to be imported for home use."

Outwards.

General provision.

3 & 4 Will. 4, c. 52.

Goods to be entered to be warehoused for exportation only.

Sect. 60. "That if by reason of the sort of any goods, or of the place from whence, or the country, or navigation of the ship in which any goods have been imported, they be such or be so imported as that they may not be used in the United Kingdom, they shall not be entered except to be warehoused, and it shall be declared upon the entry of such goods that they are entered to be warehoused for exportation only" (*a*).

Outwards.

General Provision.

Goods not to be shipped till entry of ship and entry of goods be made and cocket granted; nor till cleared;

nor stores without victualling

Proper times and places, and officers.

Forfeiture.

Sect. 61—"And whereas it is expedient that the officers of Customs should have full cognizance of all ships departing from any port or place in the United Kingdom or in the Isle of Man for parts beyond the seas, and of all goods taken out of the United Kingdom or out of the Isle of Man; and it is therefore necessary to make regulations for the entering and clearing outwards of all such ships, and for the entering, clearing, and shipping of all such goods"—enacts, "that no goods shall be shipped, or waterborne to be shipped, on board any ship in any port or place in the United Kingdom or in the Isle of Man, to be carried to parts beyond the seas, before due entry outwards of such ship (*b*) and due entry of such goods (*c*) shall have been made, and cocket granted, nor before such goods shall have been duly cleared for shipment (*d*) in manner hereinafter directed; and that no stores shall be shipped for the use of any such ship bound to parts beyond the seas, nor shall any goods be deemed or admitted to be such stores, except such as shall be borne upon the victualling bill (*e*) duly granted for such ship; and that no goods shall be so shipped, or waterborne to be so shipped, except at such times and places (*f*), and in such manner, and by such persons (*g*), and under the care of such officers, as is and are hereinafter directed; and all goods and stores which shall be shipped or be waterborne to be shipped contrary hereto shall be forfeited" (*h*).

Ships to be cleared, or master to forfeit 100*l*

Sect. 62. "That no ship on board of which any goods or stores shall have been shipped in any port in the United Kingdom or in the Isle of Man for parts beyond the seas shall depart from such port, until such ship shall have been duly cleared outwards for her intended voyage, in manner hereinafter directed (*i*), under forfeiture of the sum of one hundred pounds by the master of such ship."

Victualling bill for stores.

Sect. 63. "That the master of every ship which is to depart from any port in the United Kingdom or in the Isle of Man, for parts beyond the seas, shall, upon due application made by him, receive from the searcher a victualling bill for the shipment of such stores as he shall require, and as shall be allowed by the collector and controller, for the use of such ship, according to the voyage upon which she is about to depart (*k*); and that no articles taken on board any ship shall be deemed to be stores except such as shall be borne upon the victualling bill for the same" (*l*).

Ship's Entry.

Master to deliver certificate of clearance of last voyage.

Sect. 64. "That the master of every ship in which any goods are to be exported from the United Kingdom or from the Isle of Man to parts

(*a*) See sects. 58, 59. See also 3 & 4 Will. IV. c. 54, s. 21; and 5 & 6 Vict. c. 47, s. 26.
(*b*) See sect. 64.
(*c*) See sect. 65.
(*d*) See sect. 70.
(*e*) See sect. 63.
(*f*) See sect. 102.
(*g*) See sect. 94.
(*h*) See sect. 64, for penalty on master, and sect. 103, for penalty on shipper, in certain cases.
(*i*) See sects. 78, 80.
(*k*) See sect. 35, as to stores of former voyage. See also 3 & 4 Will. IV. c. 57, ss. 14, 17, 31.
(*l*) See sect. 78, as to clearance of ship.

Outwards.

Entry of goods.

3 & 4 Will. 4, c. 52. and to make entry outwards.

Particulars of entry.

beyond the seas shall, before any goods be taken on board (*a*), deliver to the collector or controller a certificate from the proper officer of the clearance inwards or coastwise (*b*) of such ship of her last voyage, specifying what goods, if any, have been reported inwards for exportation (*c*), and shall also deliver to the collector or controller an account, signed by the master or his agent, of the entry outwards of such ship for her intended voyage, setting forth the name and tonnage of the ship, the name of the place to which she belongs if a British ship, or of the country if a foreign ship, the name of the master, and the name or names of the place or places for which she is bound, if any goods are to be shipped for the same, and the name of the place in such port at which she is to take in her lading for such voyage; and if such ship shall have commenced her lading at some other port (*d*), the master shall state the name of any port at which any goods have been laden, and shall produce a certificate from the searcher that the cockets for such goods have been delivered to him; and the particulars of such account shall be written and arranged in such form and manner as the collector and controller shall require;

Ship's entry book.

and such account shall be the entry outwards of such ship, and shall be entered in a book to be kept by the collector, for the information of all

Penalty on master.

parties interested; and if any goods be taken on board any ship before she shall have been entered outwards, the master shall forfeit the sum of one hundred pounds: provided always, that where it shall become necessary to lade any heavy goods on board any ship before the whole

Stiffning order.

of the inward cargo is discharged, it shall be lawful for the collector and controller to issue a stiffning order for that purpose, previous to the entry outwards of the ship."

Entry of Goods (*e*).

Bill of the entry to be delivered.

Particulars.

Sect. 65. "That the person entering outwards any goods to be exported to parts beyond the seas, from any port in the United Kingdom or in the Isle of Man, shall deliver to the collector or controller a bill of the entry thereof, fairly written in words at length (*f*), expressing the name of the ship and of the master, and of the place to which the goods are to be exported, and of the person in whose name the goods are to be entered, and the quantities and proper denominations or de-

Payment of duties.

scriptions of the several sorts of goods, and shall pay down any duties which may be due upon the exportation of any such goods; and such person shall also deliver at the same time one or more duplicates of such bill, in which all sums and numbers may be expressed in figures; and the particulars to be contained in such bill shall be written and arranged in such form and manner, and the number of such duplicates

Cocket to be granted.

shall be such, as the collector and controller shall require; and thereupon the collector and controller shall cause a cocket to be written for such goods (*g*), making it known that such goods have been so entered;

Person entering goods responsible

and every cocket shall be signed by such collector and controller, and be delivered to the person who shall have made such entry, and such person shall keep and be responsible for the proper use of the same" (*h*).

Goods for drawback or bounty;

Sect. 66. "That if any drawback or bounty be allowable upon the exportation of any such goods, or any duty be payable thereon, or any

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(*a*) If a new ship, the name must be first painted. See Register Act, 3 & 4 Will. IV. c. 55, s. 24.

(*b*) Coals may remain on board, see sect. 72.

(*c*) As to clearance outwards, see sects. 78, 80, 81.

(*d*) See sect. 78.

(*e*) A bond for due shipping and landing to be entered into on entry of goods entitled to a drawback, see 5 & 6 Vict. c. 47, s. 19.

(*f*) By the 1 & 2 Vict. c. 113, s. 3, these bills of entry, and the duplicates thereof, may be either fairly written or fairly printed in part and fairly written in part.

(*g*) As to charge on cocket, see 3 & 4 Will. IV. c. 51, s. 17.

(*h*) As to separate shipments, see sect. 71; and as to final delivery to searcher, see sect. 78.

Outwards.

Entry of goods.

3 & 4 Will. 4, c. 52.

exemption from duty claimed; or if any such goods be exportable only according to some particular rule or regulation, or under some restriction or condition, or for some particular purpose or destination, such goods shall be entered and cleared for shipment by such denominations or descriptions as are used, mentioned, or referred to in the granting of such drawback or bounty, or in the levying of such duty, or granting such exemption, or in the directing of such rules, regulations, restrictions, conditions, purpose, or destination; and if the goods in such entry are charged to pay duty according to the value thereof, such value shall be stated in the entry, and shall be affirmed by the declaration of the exporter or his known agent, to be made upon the entry, and attested by his signature; and if any person shall make such declaration, not being the exporter of such goods, nor his agent duly authorized by him, such person shall forfeit the sum of one hundred pounds; and such declaration shall be made in manner and form following, and shall be binding upon the person making the same; (that is to say),

Duty goods; Goods under restriction (a); *Ad valorem* goods.

Declaration of value.

"*I*, A. B. *of* [place of abode], *do hereby declare, that I am the exporter of the goods mentioned in this entry*, [or, *that I am duly authorized by him*,] *and I do enter the same at the value of* *Witness my hand the* *day of* A. B."

Form of declaration.

Sect. 67. "That if upon examination (b) it shall appear to the officers of the Customs that such goods are not valued according to the true value thereof, the same may be detained, and (within two days) taken and disposed of for the benefit of the crown, in like manner as is hereinbefore provided in respect of goods imported (c), except that no sum in addition to the amount of the valuation and the duties paid shall be paid to the exporter or proprietor of the goods" (d).

Goods under valued detained.

Sect. 68. "That the person intending to enter outwards any foreign goods for drawback, at any other port than that at which the duties inwards on such goods had been paid, shall first deliver to the collector or controller of the port where the duties on such goods were paid, two or more bills, as the case may require, of the particulars of the importation of such goods, and of the entry outwards intended to be made; and thereupon such collector and controller, finding such bills to agree with the entry inwards, shall write off such goods from the same, and shall issue a certificate of such entry, with such particulars thereof as shall be necessary for the computation of the drawback allowable on such goods, and setting forth in such certificate the destination of the goods, and the person in whose name they are to be entered for exportation, and also the name of such other port; and such certificate, together with two or more bills of the same, as the case may require, in which all sums and numbers may be expressed in figures, being delivered to the collector or controller of the port from which the goods are to be exported, shall be the entry outwards of such goods; and such collector and controller shall thereupon cause a cocket to be written and delivered for such goods, in manner hereinbefore directed."

For drawback, or from warehouse, or duties to be first paid. Manner of entry.

Certificate inwards.

Particulars.

Cocket granted. See sect. 65

Sect. 69. "That no cocket shall be granted for the exportation of any coals to the Isle of Man, or to any British possession, until the exporter thereof shall have given security by bond in a penal sum of forty shillings the chaldron, with condition that the same shall be landed at the

Coals export bond to Isle of Man and British possessions. See c. 59, s. 91.

(a) No drawback is to be allowed on the exportation of goods of less value than the amount of drawback claimed, and the person causing such goods to be entered shall forfeit £200, or treble the amount of the drawback claimed, 5 & 6 Vict. c. 47, s. 18; and see sect. 10 of same act as to tobacco not properly manufactured, in which case no drawback is allowed.

(b) Officers may take samples. See sect. 124. See also 5 & 6 Vict. c. 47, s. 18.

(c) See sect. 22.

(d) Power to restore. See sect. 133.

Outwards.

Clearance of goods.

3 & 4 Will. 4, c. 52.

place for which they shall be exported, or otherwise accounted for to the satisfaction of the commissioners of the Customs; and also with condition to produce (within such time as the said commissioners shall require, to be expressed in such bond) a certificate of the landing of such coals at such place, under the hand of the collector or controller or other proper officer at such place: provided always, that the bond so to be given in respect of coals shall not be liable to any duty of stamps."

Clearance of Goods.

Packages to be indorsed on cocket before shipment.

Marks and numbers and total quantities.

Sect. 70. "That before any part of the goods for which any cocket shall have been granted shall be shipped or waterborne to be shipped, the same shall be duly cleared for shipment with the searcher; and before any goods be cleared for shipment, the particulars of the goods for each clearance shall be indorsed on such cocket, together with the number and denomination or description of the respective packages containing the same; and in the margin of each such indorsement shall be delineated the respective marks and numbers of such packages; and to each such indorsement shall be subjoined, in words at length, an account of the total quantities of each sort of goods intended in such indorsement, and the total number of each sort of package in which such goods are contained, distinguishing such goods, if any, as are to be cleared for any bounty or drawback of Excise or Customs, and also such goods, if any, as are subject to any duty on exportation, or entitled to any exemption from such duty, and also such goods, if any, as can only be exported by virtue of some particular order or authority, or under some particular restriction or condition, or for some particular purpose or destination; and all goods shipped or waterborne to be shipped, not being duly cleared as aforesaid, shall be forfeited."

Bounty, drawback, or duty goods, or goods under particular conditions

Goods not cleared forfeited

Cocket produced for each shipment.

Shipping bill

Order of searcher for shipment.

Sect. 71. "That the person clearing such goods for shipment (*a*) shall upon each occasion produce the cocket so indorsed to the searcher, and shall also deliver a shipping bill or copy of such indorsement, referring by names and date to the cocket upon which such indorsement is made, and shall obtain the order of the searcher for the shipment of such goods; and the particulars to be contained in such indorsement and in such shipping bill shall be written and arranged in such form and manner as the collector and controller shall require."

Coals brought coastwise may be exported without landing

Sect. 72. "That if any coals shall have been brought coastwise from one port of the United Kingdom to another, and the master shall be minded to proceed with such coals or any part of them to parts beyond the seas, it shall be lawful for such master to enter such ship and such coals outwards for the intended voyage, without first landing the coals intended for exportation, provided the officers of the Customs shall be satisfied that the quantity of coals left on board does not exceed the quantity so entered outwards."

Export of free goods.

Account of value to be delivered to the searcher.

Sect. 73—"And in order that correct accounts may be taken of the value of the exports of free goods"—enacts, "that upon the clearance for shipment of any goods the produce or manufacture of the United Kingdom, not liable to any export duty, an account, containing an accurate specification of the quantity, quality, and value of such goods, together with a declaration to the truth of the same, signed by the exporter or his known agent, shall be delivered to the searcher by the person clearing such goods; and if such declaration be false, the person signing the same shall forfeit the sum of twenty pounds; and that it shall be lawful for the searcher to call for the invoice, bills of parcels, and such other documents relating to the goods as he may think necessary for ascertaining the true value of the same: provided always, that if such exporter or agent shall make and subscribe a declaration before the collector or controller, that the value of the goods cannot be ascertained in time for the

(*a*) As to custody of cocket, see sect. 65.

Outwards.

Clearance of ship.

shipment of the same, and such declaration shall be delivered to the searcher at the time of clearance, a further time of three months shall be allowed for the delivery of such separate shipping bill, on failure whereof such exporter or agent shall forfeit the sum of twenty pounds" (*a*).

3 & 4 Will 4, c. 52

Goods for Excise drawback.

Notice to officer of Excise.

Excise order to searcher.

Shipment certified.

Sect. 74. "That no drawback of Excise shall be allowed upon any goods so cleared, unless the person intending to claim such drawback shall have given due notice to the officer of Excise, in form and manner required by any law in force relating to the Excise, and shall have obtained and have produced to the searcher at the time of clearing such goods a proper document under the hand of the officer of Excise, containing the necessary description of the goods for which such drawback is to be claimed; and if the goods to be cleared and shipped under the care of the searchers shall, upon examination, be found to correspond in all respects with the particulars of the goods contained in such document, and such goods shall be duly shipped and exported, the searcher shall, if required, certify such shipment upon such document, and shall transmit the same to the officer of Excise."

Officer of Excise may attend examination.

Sect. 75. "That it shall be lawful for the officer of Excise, if he see fit, to attend and assist at such examination, and to mark or seal the packages, and to keep joint charge of the same, together with the searcher, until the same shall have been finally delivered by him into the sole charge of the searcher, to be shipped and exported under his care."

Goods for duty, bounty, or drawback, &c. brought for shipment, not agreeing with indorsement, &c. forfeited.

Sect. 76. "That if any goods which are subject to any duty or restriction in respect of exportation, or if any goods which are to be shipped for any drawback or bounty, shall be brought to any quay, wharf, or other place, to be shipped for exportation, and such goods shall not agree with the indorsement on the cocket, or with the shipping bill, the same shall be forfeited; and if any goods prohibited to be exported be found in any package brought as aforesaid, such package and every thing contained therein shall be forfeited" (*b*).

Searcher may open any package, but if correct, must repack.

Sect. 77. "That it shall be lawful for the searcher to open all packages, and fully to examine all goods shipped or brought for shipment at any place in the United Kingdom, or in the Isle of Man; and if the goods so examined shall be found to correspond in all respects with the cocket and clearance purporting to be for the same, such goods shall be repacked at the charge of such searcher, who may be allowed such charge by the commissioners of the Customs, if they shall see fit so to do" (*c*).

Clearance of Ship.

Content to be delivered to searcher.

Particulars.

Cockets to be delivered by shippers to searcher to be filed.

Sect. 78. "That before any ship shall be cleared outwards at any port in the United Kingdom or in the Isle of Man, for parts beyond the seas, with any goods shipped on board the same in such port, the master shall deliver a content of such ship to the searcher, setting forth the name and tonnage of such ship, and the place or places of her destination, and the name of the master, and also an account of the goods shipped on board, and of the packages containing such goods, and of the marks and numbers upon such packages, and a like account of the goods on board, if any, which had been reported inwards for exportation (*d*) in such ship, so far as any of such particulars can be known by him; and also, before the clearance of such ship, the cockets, with the indorsements and clearances thereon for the goods shipped, shall be finally delivered by the respective shippers (*e*) of such goods to the searcher, who shall file the same together (*f*), and shall attach with a seal a label to the file, showing the number of cockets contained in the file, and shall compare the particu-

(*a*) And see s. 28 of the 5 & 6 Vict. c. 47.

(*b*) See sects. 70, 71. In entry outwards of goods entitled to drawback, bond for due shipping and landing shall be given, 5 & 6 Vict. c. 17, ss. 19, 20.

(*c*) As to press packing, see sect. 93.

(*d*) See sects. 8, 65, 81.

(*e*) See sects. 65, 71.

(*f*) As to goods reported for exportation, see sect. 81.

Outwards.

Clearance of ship.

3 & 4 Will. 4, c. 52.

Master to declare to content.

Clearance notified on content, on file, and on victualling bill, and in book.

lars of the goods in the cockets with the particulars of the goods in such content, and shall attest the correctness thereof by his signature on the label and on the content; and the master of the ship shall make and sign a declaration before the collector or controller to the truth of such content, and shall also answer to the collector or controller such questions concerning the ship, the cargo, and the intended voyage, as shall be demanded of him; and thereupon the collector or controller shall clear such ship for her intended voyage, and shall notify such clearance and the date thereof upon the content, and upon the label to the file of cockets, and upon the victualling bill (*a*), and also in the book of ships' entries outwards, for the information of all parties interested, and shall transmit (*b*) the content, and the cockets, and the victualling bill to the searcher; and the particulars to be contained in such content shall be written and arranged in such form and manner as the collector and controller shall require."

File of cockets and victualling bill delivered to master as the clearance.

Sect. 79. "That the file of cockets and the victualling bill shall thereupon be delivered by the searcher to the master of such ship, at such station within the port and in such manner as shall be appointed by the commissioners of his Majesty's Customs for that purpose; and such file of cockets and victualling bill, so delivered, shall be kept by the master of such ship as the authority for departing from the port with the several parcels and packages of goods and of stores on board, so far as they shall agree with the particulars in the indorsements on such cockets or with such victualling bill" (*c*).

In ballast.

Master to answer questions.

Clearance notified on victualling bill and in book.

Sect. 80. "That if any ship is to depart in ballast from the United Kingdom or from the Isle of Man for parts beyond the seas, having no goods on board except the stores of such ship borne upon the victualling bill, or any goods reported inwards for exportation in such ship (*d*), the master of such ship shall, before her departure, answer to the collector or controller such questions touching her departure and destination as shall be demanded of him; and thereupon the collector or controller shall clear such ship in ballast, and shall notify such clearance and the date thereof on the victualling bill, and also in the book of ships' entries outwards, for the information of all parties interested; and such victualling bill shall be kept by the master of such ship as the clearance of the same."

Part of former cargo reported for exportation.

Copy of report to be the clearance.

Sect. 81. "That if there be on board any ship any goods of the inward cargo which were reported for exportation in the same, the master shall, before clearance outwards of such ship from any port in the United Kingdom or in the Isle of Man, deliver to the searcher a copy of the report inwards of such goods, certified by the collector and controller; and such copy, being found to correspond with the goods so remaining on board, shall be the authority to the searcher to pass such ship with such goods on board; and being signed by the searcher, and filed with the cockets (*e*), shall be the clearance of the ship for those goods."

If any passengers, master may enter baggage in his name.

Ship with only deemed to be in ballast.

Sect. 82. "That if any passengers are to depart in any ship from the United Kingdom or from the Isle of Man for parts beyond the seas, it shall be lawful for the master of such ship to pass an entry and to receive a cocket in his name for the necessary personal baggage of all such passengers, and duly to clear such baggage for shipment in their behalf, stating in such clearances the particulars of the packages and the names of the respective passengers; and if such ship is to take no other goods than the necessary personal baggage of passengers actually going the voyage, it shall be lawful for such master to enter such ship outwards in ballast for passengers only; and if no other goods than such baggage

(*a*) See sect. 63.

(*b*) As to stations appointed for delivering clearance to master, see sects. 79, 85, 135.

(*c*) As to boarding of ships by officers, see sect. 84.

(*d*) See sects. 8, 10.

(*e*) If any cockets, see sect. 78.

Outwards.

Debenture goods.

3 & 4 Will. 4, c. 52.

duly entered and cleared be taken on board such ship, the same shall be deemed to be a ship in ballast, notwithstanding such baggage, and shall be described in the clearance, on the content, and on the label to the cocket or cockets, and on the victualling bill, and in the book of ships' entries, as a ship cleared in ballast, except as to the necessary personal baggage of passengers going the voyage."

In ballast.

Master of foreign ship may enter goods for private use of self and crew, and chalk rubbish for ballast.

Sect. 83. "That if the master and crew of any foreign ship which is to depart in ballast from the United Kingdom for parts beyond the seas, shall be desirous to take on board chalk rubbish by way of ballast, to take with them for their private use any small quantities of goods of British manufacture, it shall be lawful for such master, without entering such ship outwards, to pass an entry in his name, and receive a cocket free of any export duty for all such goods, under the general denomination of British manufactures not prohibited to be exported, being for the use and privilege of the master and crew, and not being of greater value than in the proportion of twenty pounds for the master, and ten pounds for the mate, and five pounds for each of the crew, and stating that the ship is in ballast; and the master shall duly clear such goods for shipment in behalf of himself and crew, stating in such clearances the particulars of the goods and packages, and the names of the crew who shall jointly or severally take any of such goods under this privilege; and such ship shall be deemed to be a ship in ballast, and be cleared as such, and without a content, notwithstanding such goods or such cocket or cockets; and such clearance shall be notified by the collector or controller on the label to the cocket or cockets, and on the victualling bill, and in the book of ships' entries, as a clearance in ballast, except as to the privilege of the master and crew."

Privilege, 20*l.* master, 10*l.* mate, 5*l.* crew.

Master to clear the goods.

Ship to be deemed in ballast.

Officers may board any ship after clearance.

Sect. 84. "That it shall be lawful for the officers of the Customs to go on board any ship after clearance outwards, within the limits of any port in the United Kingdom or in the Isle of Man, or within four leagues of the coast thereof, and to demand the file of cockets and the victualling bill (*a*); and if there be any goods or stores on board not contained in the indorsements on the cockets nor in the victualling bill, such goods or stores shall be forfeited; and if any goods contained in such indorsements be not on board, the master shall forfeit the sum of twenty pounds for every package or parcel of goods contained in such indorsements and not on board; and if any cocket be at any time falsified, the person who shall have falsified the same, or who shall have wilfully used the same, shall forfeit the sum of one hundred pounds."

Goods without cockets, and goods on cockets and not on board.

Penalty.

Cocket falsified.

Penalty.

Ships to bring to at stations.

Sect. 85. "That every ship departing from any port in the United Kingdom or in the Isle of Man shall bring to at such stations within the port as shall be appointed by the commissioners of his Majesty's Customs for the landing of officers from such ships, or for further examination previous to such departure" (*b*).

Debenture Goods.

Entry in name of real owner, or of commission merchant.

Sect. 86. "That no drawback or bounty shall be allowed upon the exportation from the United Kingdom of any goods unless such goods shall have been entered in the name of the person who was the real owner thereof at the time of entry and shipping, or of the person who had actually purchased and shipped the same, in his own name and at his own liability and risk, on commission, according to the practice of merchants, and who was and shall have continued to be entitled in his own right to such drawback or bounty, except in the cases hereinafter provided for" (*c*).

Declaration to exportation, and to property, and to right to drawback or bounty.

Sect. 87. "That such owner or commission merchant shall make and subscribe a declaration upon the debenture that the goods mentioned therein have been actually exported, and have not been re-landed, and are not intended to be re-landed in any part of the United Kingdom, nor

(*a*) See sects. 78, 79. (*b*) See sects. 79, 135. (*c*) Sects. 88, 89.

Outwards.

Debenture goods.

3 & 4 Will. 4, c. 52.

If drawback, &c. be not purchased, name of person entitled to be declared.

in the Isle of Man (*a*), (unless entered for the Isle of Man), nor in the islands of Faro or Ferro, and that he was the real owner thereof at the time of entry and shipping, or that he had purchased and shipped the said goods in his own name and at his own liability and risk, on commission, as the case may be, and that he was and continued to be entitled to the drawback or bounty thereon in his own right: provided always, that if such owner or merchant shall not have purchased the right to such drawback or bounty he shall declare under his hand upon the entry and upon the debenture the person who is entitled thereto, and the name of such person shall be stated in the cocket and in the debenture; and the receipt of such person on the debenture shall be the discharge for such drawback or bounty."

Agent may pass entry, and receive drawback, and make declaration, and answer questions for owner not resident.

Sect. 88. "That if such owner or merchant shall be resident in some part of the United Kingdom being more than twenty miles from the Custom House of the port of shipment, he may appoint any person to be his agent to make and pass his entry, and to clear and ship his goods, and to receive for him the drawback or bounty payable on his debenture, if payable to him, provided the name of such agent and the residence of such owner or merchant be subjoined to the name of such owner or merchant in the entry and in the cocket for such goods; and such agent, being duly informed, shall make declaration (*b*) upon the entry, if any be necessary, and also upon the debenture, in behalf of such owner or merchant, to the effect before required of such owner or merchant (*c*), and shall answer such questions touching his knowledge of the exportation of such goods, and the property therein, and of the right to the drawback or bounty as shall be demanded of him by the collector or controller; and if any such goods be exported by any corporation or company trading by a joint stock, it shall be lawful for them to appoint any person to be their agent for the like purposes and with the like powers to act in their behalf."

Joint-stock company.

Property of persons abroad consigned here to an agent, and exported by him on account of owner.

Sect. 89. "That if any goods which are to be exported for drawback be the property of any person residing abroad, having been consigned by the owner thereof to some person as his agent residing in the United Kingdom, to be exported through the same to parts beyond the seas, by such agent, upon account of such owner, it shall be lawful for such person, (being the consignee by whom and in whose name the duties inwards on such goods had been paid, or his legal representative), in like manner, as agent for such owner, to enter, clear, and ship such goods for him, and upon like conditions to receive for him the drawback payable thereon."

Shipment within three years, and payment within two years.

Damaged goods no drawback.

Forfeiture.

Penalty.

Sect. 90. "That no drawback shall be allowed upon the exportation of any goods, unless such goods be shipped within three years after the payment of the duties inwards thereon, and that no debenture for any drawback or bounty allowed upon the exportation of any goods shall be paid, after the expiration of two years from the date of the shipment of such goods, and that no drawback shall be allowed upon any goods which by reason of damage or decay shall have become of less value for home use than the amount of such drawback; and all goods so damaged which shall be cleared for any drawback (*d*) shall be forfeited, and the person who caused such goods to be so cleared shall forfeit the sum of two hundred pounds, or treble the amount of the drawback in such case, at the election of the commissioners of the Customs."

Issuing and passing debenture.

Sect. 91. "That for the purpose of computing and paying any drawback or bounty payable upon any goods duly entered, shipped, and exported, a debenture (*e*) shall, in due time after such entry, be prepared by the collector and controller, certifying in the first instance the entry

(*a*) See license goods, c. 60, s. 4.
(*b*) See proviso, sect. 87.
(*c*) See sect. 87.
(*d*) See sect. 70.
(*e*) As to payment, see cap. 51, ss. 15, 23.

Outwards.

Debenture goods.

3 & 4 Will. 4, c. 52.

outwards of such goods; and so soon as the same shall have been duly exported, and a notice containing the particulars of the goods shall have been delivered by the exporter to the searcher, the shipment and exportation thereof shall be certified to the collector and controller, upon such debenture, by the searcher, and the debenture shall thereupon be computed and passed with all convenient dispatch, and be delivered to the person entitled to receive the same" (*a*).

Certificate of landing in Isle of Man.

Sect. 92. "That no drawback or bounty shall be allowed for any goods exported from the United Kingdom to the Isle of Man, until a certificate shall be produced from the collector and controller of the Customs of the Isle of Man of the due landing of such goods."

Press-packing and declaration of packer.

Sect. 93. "That no drawback or bounty shall be allowed for any goods exported from the United Kingdom in bales cleared as being press-packed, unless the quantities and qualities of the goods in each of such bales shall be verified by the master packer thereof, or in case of unavoidable absence, by the foreman of such packer, having knowledge of the contents of the bales, by declaration made and subscribed upon the cocket before the collector or controller; or if such packer reside more than ten miles from the port, then by declaration made and subscribed, upon an account of such goods, before a magistrate or justice of the peace for the county or place where such packer shall reside; and if such bales be not cleared as being press-packed, then the searcher, having opened any such bale, shall not be required to repack the same at his charge" (*b*).

Licensed lightermen only to ship debenture or warehoused goods.

Commissioners may grant license and require bond.

Licenses in force.

Sect. 94. "That no goods cleared for drawback or bounty, or from the warehouse, shall be carried waterborne, to be put on board any ship for exportation from the United Kingdom, by any person (*c*), unless such person shall be authorized for that purpose by license under the hands of the commissioners of the Customs; and that, before granting such license, it shall be lawful for the said commissioners to require such security by bond for the faithful and incorrupt conduct of such person as they shall deem necessary; and that after granting such license it shall be lawful for the said commissioners to revoke the same, if the person to whom the same shall have been granted shall be convicted of any offence against the laws relating to the Customs or Excise; provided always, that all such licenses which shall be in force at the time of the commencement of this act, shall continue in force as if the same had been afterwards granted under the authority of this act."

Warehouse or debenture goods not exported, or if relanded, or carried to Guernsey, &c. without entry, forfeited.

Sect. 95. "That if any goods which have been taken from the warehouse to be exported from the same, or any goods which have been cleared to be exported for any drawback or bounty, shall not be duly exported to parts beyond the seas, or shall be relanded in any part of the United Kingdom, (such goods not having been duly relanded or discharged as short-shipped under the care of the proper officers), or shall be landed in the islands of Faro or Ferro, or shall be carried to any of the islands of Guernsey, Jersey, Alderney, Sark, or Man, (not having been duly entered, cleared, and shipped to be exported directly to such island), the same shall be forfeited, together with the ship from or by which the same had been so relanded, landed, or carried, and any other ship, vessel, boat, or craft which may have been used in so relanding, landing, or carrying such goods; and any person by whom or by whose orders or means such goods shall have been so taken or cleared, or so relanded, landed, or carried, shall forfeit a sum equal to treble the value of such goods."

Drawback of duties on wine allowed for officers in the navy.

Sect. 96. "That a drawback of the whole of the duties of Customs shall be allowed for wine intended for the consumption of officers of his Majesty's navy, on board such of his Majesty's ships in actual service

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(*a*) As to limitation of time for payment, see sect. 90.

(*b*) See sect. 77.

(*c*) See sect. 61.

Outwards.

Debenture goods.

3 & 4 Will. 4, c 52.

Allowances.

as they shall serve in, not exceeding the quantities of wine, in any one year, for the use of such officers, hereinafter respectively mentioned; (that is to say),

	Gallons
For every admiral	1,260
——— vice admiral	1,050
——— rear admiral	840
——— captain of the first and second rate	630
——— captain of the third, fourth, and fifth rate	420
——— captain of an inferior rate	210
——— lieutenant, and other commanding officer, and for every marine officer	105

Ports of shipment.

provided always, that such wine be shipped only at one of the ports hereinafter mentioned; (that is to say), London, Rochester, Deal, Dover, Portsmouth, Plymouth, Yarmouth, Falmouth, Belfast, Dublin, Cork, Leith, or Glasgow;" (or "Liverpool," by s. 22 of the 5 & 6 Vict. c. 47).

Persons entering such wine for drawback to declare the name and rank of officer claiming same.

Sect. 97. "That the person entering such wine, and claiming the drawback for the same, shall state in the entry and declare on the debenture the name of the officer for whose use such wine is intended, and of the ship in which he serves; and such wine shall be delivered into the charge of the officers of the Customs at the port of shipment, to be secured in the king's warehouse until the same shall be shipped under their care; and such officers having certified upon the debenture the receipt of the wine into their charge, the debenture shall be computed and passed, and be delivered to the person entitled to receive the same" (*a*).

Officers leaving the service, &c. such wine permitted to be transferred to others

Sect. 98. "That if any such officer shall leave the service or be removed to another ship, it shall be lawful for the officers of the Customs at any of the ports before mentioned, to permit the transfer of any such wine from one officer to another, as part of his proportion, whether on board the same ship or another, or the transhipment from one ship to another for the same officer, or the relanding and warehousing for future reshipment; and it shall also be lawful for the officers of Customs at any port to receive back the duties for any of such wine, and deliver the same for home use; provided always, that if any of such wine be not laden on board the ship for which the same was intended, or be unladen from such ship without permission of the proper officer of the Customs, the same shall be forfeited."

Pursers of his Majesty's ships of war may ship tobacco for use of crew free of duty, on giving bond

Sect. 99—"And whereas it is expedient to make provisions for supplying the crews of his Majesty's ships of war with tobacco for their use without payment of any duty"—enacts, "that it shall be lawful for the purser of any of his Majesty's ships of war in actual service to enter and ship at the ports of Rochester, Portsmouth, or Plymouth (*b*), in the proportions hereinafter mentioned, any tobacco there warehoused in his name or transferred into his name, for the use of the ship in which he shall serve, provided such purser shall deliver to the collector or controller of such port a certificate from the captain of such ship, stating the name of the purser and the number of men belonging to the ship, and shall also give bond, with one sufficient surety, in treble the duties payable on the tobacco, that no part thereof shall be relanded in the United Kingdom without leave of the officers of the Customs, or be landed in either of the islands of Guernsey, Jersey, Alderney, Sark, or Man."

Ports of shipment

Bond by purser.

(*a*) As to limitation of time, see sect 90

(*b*) For proper tobacco ports, see table in sect 58; and for removal to these ports, see Warehouse Act, 3 & 4 Will IV. c. 57, s. 21. No drawback is allowed on tobacco not properly manufactured; and a penalty of treble the value is incurred by the fraudulent attempt to obtain it, 5 & 6 Vict c. 47, s 10

Outwards.

Prohibitions.

3 & 4 Will. 4, c. 52.

Purser removed from one ship to another may tranship tobacco with permission of collector.

Sect. 100. "That if any purser shall be removed from one ship to another, it shall be lawful for the collector and controller of the port where such ships shall be, to permit the transhipment of the remains of any such tobacco for the use of such other ship, upon due entry of such tobacco by such purser, setting forth the time when and the port at which such tobacco was first shipped; and if any such ship shall be paid off, it shall be lawful for the collector and controller of any port where such ship shall be paid off to permit the remains of any such tobacco to be landed, and to be entered by the purser of such ship, either for payment of duties, or to be warehoused for the term of six months, for the supply of some other such ship, in like manner as any tobacco may be warehoused and supplied at either of the ports before mentioned, or for payment of all duties within such six months: provided always, that all tobacco warehoused for the purpose of so supplying his Majesty's ships of war shall be subject to the provisions of this act made for the warehousing of tobacco generally, as far as the same are applicable, and are not expressly altered by any of the provisions herein particularly made" (*a*).

Ship paid off, tobacco may be landed, &c.

Regulations of Warehouse Act.

Quantity of tobacco not to exceed, &c.

Sect. 101. "That no greater quantity of such tobacco shall be allowed to any ship of war than two pounds by the lunar month for each of the crew of such ship, nor shall any greater quantity be shipped at any one time than sufficient to serve the crew of such ship for six months after such rate of allowance; and the collector and controller of the port at or from which any such tobacco shall be supplied to any such ship, or landed from any such ship, or transferred from one such ship to another, shall transmit a particular account thereof to the commissioners of his Majesty's Customs, in order that a general account may be kept of all the quantities supplied to and consumed on board each of such ships under the allowances before granted."

Times and places for shipping goods.

Sect. 102. "That no goods (*b*) shall be put off from any wharf, quay, or other place, or shall be waterborne in order to be exported, but only on days not being Sundays or holidays (*c*), and in the daytime; (that is to say), from the first day of September until the last day of March betwixt sunrising and sunsetting, and from the last day of March unto the first day of September between the hours of seven of the clock in the morning and four of the clock in the afternoon; nor shall any such goods be then put off or waterborne for exportation, unless in the presence or with the authority of the proper officer of the Customs, nor except from a legal quay (*d*) appointed by his Majesty, or at some wharf, quay, or place appointed by the commissioners of his Majesty's Customs for the shipping of such goods by sufferance" (*e*).

Penalty for exporting prohibited goods.

Sect. 103. "That if any goods liable to forfeiture for being shipped for exportation (*f*) shall be shipped and exported without discovery by the officers of the Customs, the person or persons who shall have caused such goods to be exported shall forfeit double the value of such goods."

Prohibitions.

And restrictions absolute or modified.

Sect. 104. "That the several sorts of goods enumerated or described in the table following (denominated 'A Table of Prohibitions and Restrictions Outwards') shall be either absolutely prohibited to be exported from the United Kingdom, or shall be exported only under the restrictions mentioned in such table, according as the several sorts of such goods are respectively set forth therein; (that is to say),

A TABLE OF PROHIBITIONS AND RESTRICTIONS OUTWARDS.

Clocks and watches; *viz.*

——— any outward or inward box, case, or dial plate, of any metal, without the

(*a*) See sect. 59, referring to Warehouse Act, cap. 57.

(*b*) See sect. 61.

(*c*) See cap. 51, sect. 13.

(*d*) See sect. 139.

(*e*) See sect. 141.

(*f*) See sects. 61, 104.

Outwards.

Prohibitions.

3 & 4 Will. 4, c. 52.

Clock and Watches—*continued.*

movement in or with every such box, case, or dial plate, made up fit for use, with the clock or watchmaker's name engraven thereon.

Lace; *viz.*

——— any metal inferior to silver which shall be spun, mixed, wrought, or set upon silk, or which shall be gilt, or drawn into wire, or flatted into plate, and spun or woven, or wrought into or upon, or mixed with lace, fringe, cord, embroidery, tambour work, or buttons made in the gold or silver lace manufactory, or set upon silk, or made into bullion spangles, or pearl or any other materials made in the gold or silver lace manufactory, or which shall imitate or be meant to imitate such lace, fringe, cord, embroidery, tambour work, or buttons; nor shall any person export any copper, brass, or other metal which shall be silvered or drawn into wire, or flatted into plate, or made into bullion spangles, or pearl, or any other materials used in the gold or silver lace manufactory, or in imitation of such lace, fringe, cord, embroidery, tambour work, or buttons, or of any of the materials used in making the same, and which shall hold more or bear a greater proportion than three pennyweights of fine silver to the pound avoirdupois of such copper, brass, or other metals.

——— any metal inferior to silver, whether gilt, silvered, stained, or coloured, or otherwise, which shall be worked up or mixed with gold or silver in any manufacture of lace, fringe, cord, embroidery, tambour work, or buttons.

Tools and utensils; *viz.*

——— any machine, engine, tool, press, paper, utensil, or instrument used in or proper for the preparing, working, pressing, or finishing of the woollen, cotton, linen, or silk manufactures of this kingdom, or any other goods wherein wool, cotton, linen, or silk is used, or any part of such machines, engines, tools, presses, paper, utensils, or instruments, or any model or plan thereof, or any part thereof; except wool cards or stock cards not worth above four shillings *per* pair, and spinners' cards not worth above one shilling and sixpence *per* pair, used in the woollen manufactures.

——— blocks, plates, engines, tools, or utensils commonly used in or proper for the preparing, working up, or finishing of the calico, cotton, muslin, or linen printing manufactures, or any part of such blocks, plates, engines, tools, or utensils.

——— rollers, either plain, grooved, or of any other form or denomination, of cast iron, wrought iron, or steel, for the rolling of iron or any sort of metals, and frames, beds, pillars, screws, pinions, and each and every implement, tool, or utensil thereunto belonging; rollers, slitters, frames, beds, pillars, and screws for slitting mills; presses of all sorts, in iron and steel, or other metals, which are used with a screw exceeding one inch and a half in diameter, or any parts of these several articles, or any model of the before-mentioned utensils, or any part thereof; all sorts of utensils, engines, or machines used in the casting or boring of cannon or any sort of artillery, or any parts thereof, or any models of tools, utensils, engines, or machines used in such casting or boring, or any parts thereof; hand stamps, dog-head stamps, pulley-stamps, hammers and anvils for stamps; presses of all sorts called cutting-out presses; beds or punches to be used therewith, either in parts or pieces, or fitted together; scouring or shading engines; presses for horn buttons; dies for horn buttons; rolled metal, with silver thereon; parts of buttons not fitted up into buttons, or in an unfinished state; engines for chasing, stocks for casting buckles, buttons, and rings; die-sinking tools of all sorts; engines for making button-shanks; laps of all sorts; tools for pinching of glass; engines for covering of whips; bars of metal covered with gold or silver, and burnishing stones commonly called blood stones, either in the rough state or finished for use; wire moulds for making paper; wheels of metal, stone, or wood, for cutting, roughing, smoothing, polishing, or engraving glass; purcellas, pincers, sheers, and pipes used in blowing glass; potters' wheels and lathes, for plain, round, and engine turning; tools used by saddlers, harness-makers, and bridle-makers, *viz.* candle strainers, side strainers, point strainers, creasing irons, screw creasers, wheel irons, seat irons, pricking irons, bolstering irons, clams, and head knives.

——— frames for making wearing apparel.

Outwards.

Prohibitions.

3 & 4 Will. 4, c. 59.

A LIST of GOODS which may be PROHIBITED to be EXPORTED by Proclamation or Order in Council (*a*).

Arms, ammunition, and gunpowder.
Ashes, pot and pearl.
Military stores and naval stores, and any articles (except copper) which his Majesty shall judge capable of being converted into or made useful in increasing the quantity of military or naval stores.
Provisions, or any sort of victual which may be used as food by man.

Forfeiture.

And if any goods shall be exported, or be waterborne to be exported, from the United Kingdom, contrary to any one of the prohibitions or restrictions mentioned in such table in respect of such goods, the same shall be forfeited" (*b*).

Coastwise.

General Provisions.

All trade by sea from one part of the United Kingdom to another to be deemed coastwise, and no part to be deemed beyond the seas.

Sect. 105—"And whereas it is necessary to make regulations for the coasting trade of the United Kingdom and of the Isle of Man, and that the officers of the Customs should have cognizance of all ships carrying any goods coastwise from one part of the United Kingdom or of the Isle of Man to another of the same, and of all goods so carried, in order that such trade may be confined to British ships (*c*), and that all duties levied coastwise may be duly collected, and that the laws for regulating the importation and exportation (*d*) of goods from and to parts beyond the seas may not be evaded"—enacts, "that all trade by sea from any one part of the United Kingdom to any other part thereof, or from one part of the Isle of Man to another thereof, shall be deemed to be a coasting trade, and all ships while employed therein shall be deemed to be coasting ships; and that no part of the United Kingdom, however situated with regard to any other part thereof, shall be deemed in law, with reference to each other, to be parts beyond the seas in any matter relating to the trade or navigation or revenue of this realm."

Lords of Treasury to regulate what shall be deemed trading by sea under this act.

Sect. 106—"And whereas some parts of the coast of the United Kingdom may be so situated with regard to other neighbouring parts thereof that doubts may arise in some cases whether the passage between them by water shall be deemed to be a passage by sea within the meaning of this act; and that in other cases, although such passage be by sea, it may be unnecessary for the purposes of this act, or of any act relating to the Customs, to subject ships passing between such places to the restraints of coast regulations"—enacts, "that it shall be lawful for the said commissioners of his Majesty's treasury to determine and direct in what cases the trade by water from any place on the coast of the United Kingdom to another of the same, shall or shall not be deemed a trade by sea within the meaning of this act or of any act relating to the Customs."

Coasting confined to coasting voyage.

Sect. 107. "That no goods shall be carried in any coasting ship, except such as shall be laden to be so carried at some port or place in the United Kingdom, or at some port or place in the Isle of Man respectively; and that no goods shall be laden on board any ship to be carried coastwise, until all goods brought in such ship from parts beyond the seas shall have been unladen; and that if any goods shall be taken into or put out of any coasting ship at sea or over the sea, or if any coasting ship shall touch at any place over the sea, or deviate from her voyage, unless forced by unavoidable circumstances; or if the master of any coasting ship which shall have touched at any place over the sea, shall not declare the same in writing under his hand to the collector or controller at the port in the United Kingdom or in the Isle of Man where such ship shall afterwards first arrive, the master of such ship shall forfeit the sum of two hundred pounds."

Penalty on deviation unless declared.

(*a*) See sect. 118.
(*b*) See sects. 76, 103.
(*c*) See Navigation Act, 3 & 4 Will. IV. c. 54.
(*d*) See sect. 116.

Coastwise.

General provisions.

3 & 4 Will. 4, c. 52.

Before goods be laden or unladen, notice of intention or of arrival to be given, and proper documents to issue.

Sect. 108. "That no goods shall be laden on board any ship in any port or place in the United Kingdom or in the Isle of Man, to be carried coastwise; nor having been brought coastwise shall be unladen in any such port or place from any ship, until due notice in writing, signed by the master (*a*), shall have been given to the collector or controller, by the master, owner, wharfinger, or agent of such ship, of the intention to lade goods on board the same to be so carried, or of the arrival of such ship with goods so brought, as the case may be; nor until proper documents (*b*) shall have been granted as hereinafter directed for the lading or for the unlading of such goods; and such goods shall not be laden or unladen, except at such times and places (*c*), and in such manner, and by such persons, and under the care of such officers, as is and are hereinafter directed; and all goods laden to be so carried, or brought to be so unladen, contrary hereto, shall be forfeited."

Particulars in notice;

within twenty-four hours of arrival for unlading;

for lading, to state last voyage and clearance.

Sect. 109. "That in such notice (*d*) shall be stated the name and tonnage of the ship, and the name of the port to which she belongs, and the name of the master, and the name of the port to which she is bound or from which she has arrived, and the name or description of the wharf or place at which her lading is to be taken in or discharged, as the case may be; and such notice shall be signed by the master, owner, wharfinger, or agent of such ship, and shall be entered in a book to be kept by the collector, for the information of all parties interested; and every such notice for the unlading of any ship or vessel shall be delivered within twenty-four hours after the arrival of such ship or vessel, under a penalty of twenty pounds, to be paid by the master of such ship or vessel; and in every such notice for the lading of any ship or vessel shall be stated the last voyage on which such ship or vessel shall have arrived at such port; and if such voyage shall have been from parts beyond the seas, there shall be produced with such notice a certificate from the proper officer of the discharge of all goods, if any, brought in such ship, and of the due clearance of such ship or vessel inwards of such voyage."

From and to Ireland with certain goods.

Master must attend to deliver notice, &c.

Sect. 110. "That upon the arrival of any coasting ship at any port in Great Britain from Ireland, or at any port in Ireland from Great Britain, the master of such ship shall, within twenty-four hours after such arrival, attend and deliver such notice (*e*), signed by him, to the collector or controller; and if such ship shall have on board any goods subject on arrival to any duty of Excise (*f*), or any goods which had been imported from parts beyond the seas, the particulars of such goods, with the marks and numbers of the packages containing the same, shall be set forth in such notice; and if there shall be no such goods on board, then it shall be declared in such notice that no such goods are on board; and the master shall also answer any questions relating to the voyage as shall be demanded of him by the collector or controller; and every master who shall fail in due time to deliver such notice, and truly to answer such questions, shall forfeit the sum of one hundred pounds."

After notice given of lading goods on board coasting ships, collector may grant general sufferance.

Sect. 111. "That when due notice shall have been given to the collector or controller at the port of lading, of the intention to lade goods on board any coasting ship, such collector or controller shall grant a general sufferance (*g*) for the lading of goods (without specifying the same) on board such ship, at the wharf or place which shall be expressed in such sufferance; and such sufferance shall be a sufficient authority for the lading of any sort of goods, except such, if any, as shall be

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(*a*) If between Great Britain and Ireland, master must attend. See sect. 110.

(*b*) See sects. 109, 115.

(*c*) See sect. 117.

(*d*) See also sect. 110.

(*e*) See sects. 108, 109.

(*f*) See also sect. 114.

(*g*) See also sect. 115.

Coastwise.

General provision.

3 & 4 Will. 4, c. 52.

expressly excepted therein: provided always, that before any sufferance be granted for any goods prohibited to be exported (*a*), or subject to any export duty other than any *ad valorem* duty, the master or owner of any such ship, or the shipper of such goods, shall give bond, with one sufficient surety, in treble the value of the goods, that the same shall be landed at the port for which such sufferance is required, or shall be otherwise accounted for to the satisfaction of the commissioners of his Majesty's Customs."

Bond for goods subject to rated export duty.

Sect. 112. "That the master of every coasting ship shall keep or cause to be kept a cargo book of the same, stating the name of the ship, and of the master, and of the port to which she belongs, and of the port to which bound on each voyage; and in which book shall be entered, at the port of lading, an account of all goods taken on board such ship, stating the descriptions of the packages, and the quantities and descriptions of the goods therein, and the quantities and descriptions of any goods stowed loose, and the names of the respective shippers and consignees, as far as any of such particulars shall be known to him; and in which book, at the port of discharge, shall be noted the respective days upon which any of such goods be delivered out of such ship, and also the respective times of departure from the port of lading, and of arrival at any port of unlading; and such master shall produce such book for the inspection of the coast-waiter or other proper officer, so often as the same shall be demanded, and who shall be at liberty to make any note or remark therein; and if such master shall fail correctly to keep such book, or to produce the same, or if at any time there be found on board such ship any goods not entered in the cargo book as laden, or any goods noted as delivered, or if at any time it be found that any goods entered as laden, or any goods noted as delivered, be not on board, the master of such ship shall forfeit the sum of fifty pounds; and if upon examination at the port of lading, any package entered in the cargo book as containing any foreign goods, shall be found not to contain such goods, such package, with its contents, shall be forfeited; and if at the port of discharge any package shall be found to contain any foreign goods which are not entered in such book, such goods shall be forfeited."

Master of coasting vessel to keep a cargo book.

Penalty for false entries in such book.

Sect. 113. "That before any coasting ship shall depart from the port of lading (*b*), an account, together with a duplicate of the same, all fairly written, and signed by the master, shall be delivered to the collector or controller; and in such account shall be set forth such particulars as are required to be entered in the cargo book (*c*), of all foreign goods, and of all goods subject to export duty, (other than any *ad valorem* duty), and of all corn, grain, meal, flour, or malt, laden on board, and generally whether any other British goods or no other British goods be laden on board, as the case may be, or whether such ship be wholly laden with British goods not being of any of the descriptions before mentioned, as the case may be; and the collector or controller shall select and retain one of such accounts, and shall return the other, dated and signed by him, and noting the clearance of the ship thereon; and such account shall be the clearance of the ship for the voyage, and the transire for the goods expressed therein; and if any such account be false, or shall not correspond with the cargo book, the master shall forfeit the sum of fifty pounds."

Accounts of foreign goods, subject to coast or export duty, to be delivered to collector.

Sect. 114. "That before any goods be unladen from any coasting ship at the port of discharge, the master, owner, wharfinger or agent of such ship shall deliver the transire to the collector or controller of such port, who shall thereupon grant an order for the unlading of such ship at the wharf or place specified in such order: provided always, that if any of the goods on board such ship be subject to any duty of Customs

Transire to be delivered to collector before goods be unladen.

Goods subject to duty on arrival.

(*a*) See sect. 104. (*b*) See exceptions, sect. 115. (*c*) See sect. 112.

Coastwise.

General provision.

3 & 4 Will. 4, c. 52.

Excise duties.

or Excise, payable on arrival coastwise at such port, the master, owner, wharfinger, or agent of such ship, or the consignee of such goods, shall also deliver to the collector or controller a bill of the entry of the particulars of such goods, expressed in words at length, together with a copy thereof, in which all sums and numbers may be expressed in figures, and shall pay down all duties of Customs, or produce a permit in respect of all duties of Excise, (see also sect. 110,) which shall be due and payable on any of such goods, as the case may be; and thereupon the collector and controller shall grant an order for the landing of such goods, in the presence or by the authority of the coast-waiter."

Collector in certain cases may grant general transire for coasting vessels.

Sect. 115 provides and enacts, "that it shall be lawful for the collector and controller, in the cases hereinafter mentioned, to grant for any coasting ship a general transire, to continue in force for any time not exceeding one year from the date thereof, for the lading of any goods (except such goods, if any, as shall be expressly excepted therein), and for the clearance of the ship in which the goods shall be laden, and for the unlading of the goods at the place of discharge; (that is to say),

For any ship regularly trading between places in the river Severn eastward of the Holmes:

For any ship regularly trading between places in the river Humber:

For any ship regularly trading between places in the Firth of Forth:

For any ship regularly trading between places to be named in the transire, and carrying only manure, lime, chalk, stone, gravel, sand, or any earth, not being fuller's earth:

Provided always, that such transire shall be written in the cargo book (see sect. 112,) hereinbefore required to be kept by the masters of coasting ships: provided also, that if the collector and controller shall at any time revoke such transire, and notice thereof shall be given to the master or owner of the ship, or shall be given to any of the crew when on board the ship, or shall be entered in the cargo book by any officer of the customs, such transire shall become void, and shall be delivered up by the master or owner to the collector or controller."

General transire may be revoked.

Coast waiter, landing waiter, or searcher may board and examine coasting ship.

Sect. 116. "That it shall be lawful in any case, and at all legal times, for the coast-waiter, and also for the landing-waiter, and for the searcher, and for any other proper officer of the Customs, to go on board any coasting ship in any port or place in the United Kingdom or in the Isle of Man, or at any period of her voyage, and strictly to search such ship, and to examine all goods on board, and all goods being laden or unladen, and to demand all documents which ought to be on board such ship."

Times and places for landing and shipping.

Sect. 117. "That no goods shall be unshipped from any ship arriving coastwise in the United Kingdom or in the Isle of Man, and also that no goods shall be shipped, or waterborne to be shipped, in the United Kingdom or in the Isle of Man, to be carried coastwise, but only on days not being Sundays or holidays, (see cap. 51, sect. 13,) and in the daytime, (that is to say), from the first day of September until the last day of March betwixt sun-rising and sun-setting, and from the last day of March until the first day of September between the hours of seven of the clock in the morning and four of the clock in the afternoon; nor shall any such goods be so unshipped, shipped, or waterborne, unless in the presence or with the authority of the proper officer of the Customs, nor unless at places which shall be appointed or approved by the proper officer of the Customs."

Goods prohibited or restrained.

Sect. 118. "That whenever any goods which may be prohibited to be exported by proclamation or by order in council (see sect. 104) under the authority of this act shall be so prohibited, it shall be lawful in such proclamation or order in council to prohibit or restrict the carrying of such goods coastwise; and if any such goods shall be carried coastwise, or shall be shipped or waterborne to be carried coastwise, contrary to any such prohibition or restriction, the same shall be forfeited."

Construction in general.

3 & 4 Will. 4, c. 52. Terms used in acts.

Sect. 119—"And in order to avoid the frequent use of numerous terms and expressions in this act, and in other acts relating to the Customs, and to prevent any misconstruction of the terms and expressions used therein"—enacts, "that whenever the several terms or expressions following shall occur in this act, or in any other act relating to the Customs or to trade and navigation, the same shall be construed respectively in the manner hereinafter directed; (that is to say,) that the term 'ship' shall be construed to mean ship or vessel generally, unless such term shall be used to distinguish a ship from sloops, brigantines, and other classes of vessels; that the term 'master' of any ship shall be construed to mean the person having or taking the charge or command of such ship; that the term 'owners' and the term 'owner' of any ship shall be construed alike to mean one owner, if there be only one, and any or all the owners, if there be more than one; that the term 'mate' of any ship shall be construed to mean the person next in command of such ship to the master thereof; that the term 'seaman' shall be construed to mean alike seaman, mariner, sailor, or landsman, being one of the crew of any ship; that the term 'British possession' shall be construed to mean colony, plantation, island, territory, or settlement belonging to his Majesty; and that the term 'His Majesty' shall be construed to mean his Majesty, his heirs, and successors; and that the term 'East India Company' shall be construed to mean the United Company of Merchants of England trading to the East Indies; that the term 'limits of the East India Company's charter' (*a*) shall be construed to mean all places and seas eastward of the Cape of Good Hope to the Straits of Magellan; that the terms 'collector and controller' shall be construed to mean the collector and controller of the Customs of the port intended in the sentence; that whenever mention is made of any public officer, the officer mentioned shall be deemed to be such officer for the time being; that the term 'warehouse' shall be construed to mean any place, whether house, shed, yard, timber-pond, or other place in which goods entered to be warehoused upon importation may be lodged, kept, and secured without payment of duty, or although prohibited to be used in the United Kingdom; that the term 'King's warehouse' shall be construed to mean any place provided by the crown for lodging goods therein for security of the Customs."

Ship. Master. Owner or owners. Mate. Seaman. British possession. His Majesty. East India Company. Charter. Collector and controller. Officer. Warehouse. King's warehouse.

Sect. 120. "That the island of Malta and its dependencies shall be deemed to be in Europe."

Malta.

General Rules.

Weights, measures, currency, management.

Sect. 121. "That all duties, bounties and drawbacks of Customs shall be paid and received in every part of the United Kingdom and of the Isle of Man in British currency, and according to imperial weights and measures; and that in all cases where such duties, bounties, and drawbacks are imposed and allowed according to any specific quantity, or any specific value, the same shall be deemed to apply in the same proportion to any greater or less quantity or value; and all such duties, bounties, and drawbacks shall be under the management of the commissioners of the Customs."

Collector to take bonds in respect of goods relating to Customs.

Sect. 122. "That all bonds relating to the Customs required to be given in respect of goods or ships shall be taken by the collector and controller for the use of His Majesty; and after the expiration of three years from the date thereof, or from the time, if any, limited therein for the performance of the condition thereof, every such bond upon which no prosecution or suit shall have been commenced shall be void, and may be cancelled and destroyed" (*b*).

(*a*) The discontinuance of the exclusive rights of trade of the company does not affect this definition.

(*b*) The provisions of this section are not to extend to warehousing bonds, 5 & 6 Vict. c. 47, s. 16.

General rules.

3 & 4 Will. 4, c. 54.

Mode of ascertaining strength of foreign spirits.

Sect. 123—"And whereas it is expedient that the mode of ascertaining the strengths and quantities of foreign spirits imported into the United Kingdom should at all times be exactly similar to the mode in practice for ascertaining the strengths and quantities of spirits made within the United Kingdom"—enacts, "that the same instruments, and the same tables and scales of graduation, and the same rules and methods, as the officers of the Excise shall by any law in force for the time being be directed to use, adopt, and employ in trying and ascertaining the strengths and quantities of spirits made within the United Kingdom, for the purpose of computing and collecting the duties of Excise payable thereon, shall be used, adopted, and employed by the officers of the Customs in trying and ascertaining the strengths and quantities of spirits imported into the United Kingdom, for the purpose of computing and collecting the duties of Customs payable thereon."

Officers of Customs to take sample of goods.

Sect. 124. "That it shall be lawful for the officers of the Customs to take such samples of any goods as shall be necessary for ascertaining the amount of any duties payable on the same; and all such samples shall be disposed of and accounted for in such manner as the commissioners of his Majesty's Customs shall direct."

Time of an importation and of an exportation defined.

Sect. 125. "That if upon the first levying or repealing of any duty, or upon the first granting or repealing of any drawback or bounty, or upon the first permitting or prohibiting of any importation or exportation, whether inwards, outwards, or coastwise, in the United Kingdom or in the Isle of Man, it shall become necessary to determine the precise time at which an importation or exportation of any goods made and completed shall be deemed to have had effect, such time, in respect of importation, shall be deemed to be the time at which the ship importing such goods had actually come within the limits of the port at which such ship shall in due course be reported, and such goods be discharged; and that such time, in respect of exportation, shall be deemed to be the time at which the goods had been shipped on board the ship in which they had been exported; and that if such question shall arise upon the arrival or departure of any ship, in respect of any charge or allowance upon such ship, exclusive of any cargo, the time of such arrival shall be deemed to be the time at which the report of such ship shall have been or ought to have been made; and the time of such departure shall be deemed to be the time of the last clearance of such ship with the collector and controller for the voyage upon which she had departed."

Arrival and departure of a ship defined.

Return of duty overpaid.

Limitation of time.

Sect. 126. "That although any duty of Customs shall have been overpaid, or although after any duty of Customs shall have been charged and paid it shall appear or be judicially established that the same had been charged under an erroneous construction of the law, it shall not be lawful to return any such overcharge after the expiration of three years from the date of such payment."

Tonnage or burthen of ships how ascertained.

Sect. 127. "That the tonnage or burthen of every British ship within the meaning of this act shall be the tonnage set forth in the certificate of registry of such ship, and that the tonnage or burthen of every other ship shall, for the purposes of this act, be ascertained in the same manner as the tonnage of British ships is ascertained" (*a*).

Officers may refuse master of British ship unless indorsed on register.

Sect. 128. "That it shall be lawful for the officers of Customs at any port under British dominion where there shall be a collector and controller of the Customs, to refuse to admit any person to do any act at such port as master of any British ship, unless his name shall be inserted in, or have been indorsed upon, the certificate of registry of such ship as being the master thereof, or until his name shall have been so indorsed by such collector and controller" (*b*).

(*a*) See Register Act, 3 & 4 Will. IV. c. 55, ss. 16, 17, 18.
(*b*) See *ibid.* sect. 21.

General rules.

3 & 4 Will. 4, c. 52.

Falsifying documents.

Sect. 129. "That if any person shall counterfeit or falsify, or wilfully use when counterfeited or falsified, any entry, warrant, cocket, or transire, or other document for the unlading, lading, entering, reporting, or clearing of any ship or vessel, or for the landing or shipping of any goods, stores, baggage, or article whatever, or shall by any false statement procure any writing or document to be made for any of such purposes, every person so offending shall for every such offence forfeit the sum of two hundred pounds: provided always, that this penalty shall not attach to any particular offence for which any other penalty shall be expressly imposed by any law in force for the time being."

Penalty.

Authority of an agent may be required.

Sect. 130. "That whenever any person shall make any application to any officer of the Customs to transact any business on behalf of any other person, it shall be lawful for such officer to require of the person so applying to produce a written authority from the person on whose behalf such application shall be made, and in default of the production of such authority to refuse to transact such business" (*a*).

Person falsifying declaration liable to penalty.

Sect. 131. "That if any declaration required to be made by this act or by any other act relating to the Customs (except declarations to the value of goods) be untrue in any particular, or if any person required by this act or by any other act relating to the Customs to answer questions put to him by the officers of the Customs, touching certain matters, shall not truly answer such questions, the person making such declaration or answering such questions shall, over and above any other penalty to which he may become subject, forfeit the sum of one hundred pounds."

Seizures.

Ship to include tackle, &c.

Goods to include package.

Sect. 132. "That all goods, and all ships, vessels, and boats, which by this act or any act at any time in force relating to the Customs shall be declared to be forfeited, shall and may be seized by any officer of the Customs (*b*); and such forfeiture of any ship, vessel, or boat shall be deemed to include the guns, tackle, apparel, and furniture of the same; and such forfeiture of any goods shall be deemed to include the proper package in which the same are contained."

Restoration of seized goods, ships, vessels, or boats by the commissioners of Customs.

Sect. 133. "That in case any goods, ships, vessels, or boats shall be seized as forfeited, or detained as undervalued, by virtue of any act of parliament relating to the Customs, it shall be lawful for the commissioners of his Majesty's Customs to order the same to be restored in such manner and on such terms and conditions as they shall think fit to direct (*c*); and if the proprietor of the same shall accept the terms and conditions prescribed by the said commissioners, he shall not have or maintain any action for recompence or damage on account of such seizure or detention; and the person making such seizure shall not proceed in any manner for condemnation."

Remission of forfeitures and penalties by commissioners, on proof of innocence of owners and master.

Sect. 134. "That if any ship shall have become liable to forfeiture on account of any goods laden therein or unladen therefrom, or if the master of any ship shall have become liable to any penalty on account of any goods laden in such ship or unladen therefrom, and such goods shall be small in quantity or of trifling value, and it shall be made appear to the satisfaction of the commissioners of his Majesty's Customs (*d*) that such goods had been laden or unladen contrary to the intention of the owners of such ship, or without the privity of the master thereof, as the case may be, it shall be lawful for the said commissioners to remit such forfeiture, and also to remit or mitigate such penalty, as they shall see reason to

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(*a*) See agent declaring value without authority, sects. 21, 66. See licensed agents, sects. 144 to sect. 148.

(*b*) See also Smuggling Act, 3 & 4 Will. IV. c. 53, s. 32; and 5 & 6 Vict. c. 47, s. 31 *et seq.*

(*c*) And it has been decided, that it is not essential that any terms or conditions should be imposed by the order. In the matter of the ship *Maria*, 1 *Price*, 4.

(*d*) *Id est*, upon affidavit and petition, *post*.

General rules.

3 & 4 Will. 4, c. 52.

acquit such master of all blame in respect of such offence, or more or less to attribute the commission of such offence to neglect of duty on his part as master of such ship; and every forfeiture and every penalty or part thereof, so remitted, shall be null and void, and no suit or action shall be brought or maintained by any person whatever on account thereof."

Ships not bringing to at stations, masters to forfeit 100*l*.

Sect. 135. "That if any ship coming up or departing out of any port in the United Kingdom or in the Isle of Man shall not bring to at the proper stations in such port appointed by the commissioners of his Majesty's Customs for the boarding or landing of officers of the Customs, the master of such ship shall for every such offence forfeit the sum of one hundred pounds" (*a*).

Officers may be stationed in ships in limits of any port.

Accommodation of officers on board.

Sect. 136. "That it shall be lawful for the commissioners of his Majesty's Customs, and for the collector and controller of any port under their directions, to station officers on board any ship while within the limits of any port in the United Kingdom or in the Isle of Man; and the master of every ship on board of which any officer is so stationed shall provide every such officer sufficient room under the deck, in some part of the forecastle or steerage, for his bed or hammock, and in case of neglect or refusal so to do shall forfeit the sum of one hundred pounds."

Power to charge rent in King's warehouse.

Sect. 137. "That whenever any goods shall be taken to and secured in any of the King's warehouses in the United Kingdom or in the Isle of Man, for security of the duties thereon, or to prevent the same from coming into home use, it shall and may be lawful for the commissioners of his Majesty's Customs to charge and demand and receive warehouse rent for such goods for all such time as the same shall remain in such warehouse, at the same rate as may be payable for the like goods when warehoused in any warehouse in which such goods may be warehoused without payment of duty: provided always, that it shall be lawful for the lords commissioners of his Majesty's treasury, or the commissioners of his Majesty's Customs, by warrant or order under their hands respectively, from time to time to fix the amount of rent which shall be payable for any goods secured in any of the King's warehouses as aforesaid."

Power to sell goods not cleared from King's warehouse, within limits of a port.

Sect. 138. "That in case such goods shall not be duly cleared from the King's warehouse within three calendar months, (or sooner, if they be of a perishable nature), it shall be lawful for the commissioners of his Majesty's Customs to cause such goods to be publicly sold by auction, for home use or for exportation, as the case may be; and the produce of such sale shall be applied towards the payment of the duties, if sold for home use, and of the warehouse rent and all other charges; and the overplus (if any) shall be paid to the person authorized to receive the same: provided always, that it shall be lawful for the said commissioners to cause any of such goods to be destroyed as cannot be sold for a sum sufficient to pay such duties and charges, if sold for home use, or sufficient to pay such charges, if sold for exportation: provided also, that if such goods shall have been landed by the officers of the Customs (*b*), and the freight of the same shall not have been paid, the produce of such sale shall be first applied to the payment of such freight."

Power of his Majesty to appoint ports and legal quays.

Sect. 139. "That it shall be lawful for his Majesty, by his commission out of the Court of Exchequer, from time to time to appoint any port, haven, or creek in the United Kingdom or in the Isle of Man, and to set out the limits thereof, and to appoint the proper places within the same to be legal quays for the lading and unlading of goods, and to declare that any place which had been set out as a legal quay by such authority shall be no longer a legal quay, and to appoint any new place within any port

(*a*) See, for inwards, sect. 13; for outwards, sect. 85.

(*b*) See power to land goods, sect. 17; see also Warehouse Act, 3 & 4 Will. IV. c. 57, s. 47, as to goods in dock.

to be a legal quay for the lading and unlading of goods: provided always, that all ports, havens, and creeks, and the respective limits thereof, and all legal quays, appointed and set out and existing as such at the commencement of this act under any law till then in force, shall continue to be such ports, havens, creeks, limits, and legal quays respectively as if the same had been appointed and set out under the authority of this act."

Licensed agents in London.

3 & 4 Will. 4, c. 52.

Sect. 140. "That in any information or other proceeding for any offence against any act made or to be made relating to the Customs, the averment that such offence was committed within the limits of any port shall be sufficient, without proof of such limits, unless the contrary be proved."

Averment of offence within limits of port.

Sect. 141. "That it shall be lawful for the commissioners of his Majesty's Customs from time to time, by any order under their hands, to appoint places to be sufferance wharfs, for the lading and unlading of goods by sufferance, to be duly issued by them, or by the proper officers under their directions, in such manner and in such cases as they shall see fit."

Commissioners may appoint sufferance wharfs.

Sect. 142. "That no ship or boat appointed and employed ordinarily for the carriage of letters shall import or export any goods without permission of the commissioners of his Majesty's Customs, under the penalty of the forfeiture of one hundred pounds, to be paid by the master of such ship or boat."

No ships engaged in carriage of letters to import or export goods without permission.

Sect. 143. "That no person shall be deemed to be an apprentice for the purposes of an act passed in the fourth year of the reign of his late Majesty, intituled '*An Act for regulating the number of apprentices to be taken on board British merchant vessels, and for preventing desertion of seamen*' (*a*), unless the indenture of such apprentice shall have been enrolled with the collector and controller of the port from which any such apprentice shall first go to sea after the date of such indenture, or in default of such enrolment, until the same shall have been enrolled at some port from which the ship in which such apprentice shall afterwards go to sea shall be cleared."

No person deemed an apprentice until indenture enrolled with collector.

4 Geo. 4, c. 25.

Sect. 144. "That it shall not be lawful for any person to act as an agent (*b*) for transacting business at the Custom House in the port of London (*c*) which shall relate to the entry or clearance of any ship, or of any goods, or of any baggage, unless authorized so to do by license of the commissioners of his Majesty's Customs, who are hereby empowered to require bond to be given by every person to whom such license shall be granted, with one sufficient surety, in the sum of one thousand pounds, for the faithful and incorrupt conduct of such person and of his clerks acting for him: provided always, that such bond shall not be required of any person who shall be one of the sworn brokers of the city of London; and if any person shall act as such agent, not being so licensed, or if any person shall be in partnership in such agency with any person not so licensed, such person shall, in either case, for every such offence, forfeit the sum of one hundred pounds."

Licensed Agents. London.

Persons entering or clearing ships, &c. as agents, to be licensed, and give bond.

Exception.

Penalty.

Sect. 145. "That it shall be lawful for the said commissioners of his Majesty's treasury, by any order under their hands, to revoke any such license; and that after a copy of such order shall have been delivered to such person or to his clerk, or left at his usual place of abode or business, such license shall be void."

Treasury may revoke license.

Sect. 146. "Providing that nothing herein contained shall extend to prevent the clerk or servant of any person, or of any persons in copartnership, from transacting any business at the Custom House on account of such person or persons, without such license; provided such

Not to extend to clerks or servants of individuals.

(*a*) This act extended to Ireland, see 3 & 4 Will. IV. c. 50, s. 3.

(*b*) See sect. 130.

(*c*) See sect. 148, as to outports.

Smuggling.

3 & 4 Will. 4, c. 52.

Agent may appoint clerks to act for him only.

clerk or servant shall not transact any such business as clerk, servant, or agent to any other person."

Sect. 147. "That it shall be lawful for any such agent or agents in co-partnership, to appoint any person without license to be his or their clerk in transacting such agency: provided always, that no person shall be admitted to be such clerk to more than one agent or co-partnership of agents, nor until his name and residence and the date of his appointment shall have been indorsed on the license of every such agent, and signed by him, and witnessed by the signature of the collector and controller of the Customs, unless such person shall have been appointed with consent of the commissioners of his Majesty's Customs before the commencement of this act."

Treasury may extend regulations to other ports.

Sect. 148. "That it shall be lawful for the said commissioners of his Majesty's treasury, by their warrant, to be published in the *London* or *Dublin Gazette*, to extend the regulations hereinbefore made, relating to agents in the port of London, to agents at any other port in Great Britain, or at any port in Ireland."

III. Prevention and Punishment of Smuggling.

Statutes against Smuggling.

[3 & 4 Will. IV. c. 53; 4 Will. IV. c. 13; 4 & 5 Will. IV. c. 89; 6 & 7 Will. IV. c. 60; 1 & 2 Vict. c. 113; 5 & 6 Vict. c. 47.]

The next branch of the law of Customs to be considered is that in relation to the prevention and punishment of smuggling; with respect to which the legislature has adopted a similar mode of proceeding as with the two former portions, which have already been treated of, viz. by passing occasionally a consolidated act, which is altered and amended from time to time, according as the exigencies of the case may require. The last consolidated act against smuggling is the 3 & 4 Will. IV. c. 53, we shall, therefore, consider its enactments with the subsequent amendments in the order below stated. Considerable difficulty, however, frequently arises from the fact of there being so many amending statutes, rendering it often doubtful how much or how little of the old law remains in force. The enactments, then, are arrangable in the following order:

Commencement of the Act, 536.
Vessels and Boats, 536.
Licenses, 541.
Vessels and Goods, 544.
Penalties, 548.
Felonies, 552.
Officers, 553.
Rewards, 554.
Rewards to Officers making Seizures, 554.
Jurisdiction, and herein principally of Justices, 556.
Schedule of Forms, 569.

3 & 4 Will. 4, c. 53.

The 3 & 4 Will. IV. c. 53, intituled "*An Act for the Prevention of Smuggling*," (passed 28th August, 1833), reciting the then preceding consolidated act, viz. the 6 Geo. IV. c. 108, and that since the passing of that act, divers acts for the further amendment of the law in that respect had been found necessary, and that it would be of advantage to the trade and commerce of the country that the said acts should be consolidated into one act; enacts, "that this act shall commence on the 1st Sept. 1833, except where any other commencement is herein particularly directed; and that all the provisions of it shall extend to any law in force or hereafter to be made relating to the Customs."

Commencement of act.

Regulations as to Vessels and Boats.

Certain vessels belonging to his

Sect. 2. "That if any vessel not being square-rigged (*a*), or any boat,

(*a*) Instead of 70 tons burthen at least, as by the table of restrictions in the 3 & 4 Will. IV. c. 52, s. 58, to be of 60 tons burthen or upwards: *vide* the 6 & 7 Will. IV. c. 60, s. 5.

Vessels and boats.

3 & 4 Will. 4, c. 53.

Majesty's subjects, &c., and foreign vessels found within certain distances of the coast of the United Kingdom, and with certain goods on board, forfeited (*f*).

either belonging in the whole or in part to his Majesty's subjects, or having half the persons on board subjects of his Majesty, shall be found or discovered to have been within one hundred leagues of the coast of the United Kingdom; or if any vessel, either belonging in the whole or in part to his Majesty's subjects, or having half the persons on board subjects of his Majesty, or any foreign vessel not being square-rigged (*a*), or any foreign boat, in which there shall be one or more subjects of his Majesty, shall be found or discovered to have been *within four leagues* of that part of the United Kingdom which is between the North Foreland on the coast of Kent, and Beachy Head on the coast of Sussex, or *within eight leagues* of any other part of the coast of the United Kingdom; or if any foreign vessel or boat shall be found or discovered to have been within *one league* of the coast of the United Kingdom; or if any vessel or boat shall be found or discovered to have been within one league of the islands of Guernsey, Jersey, Alderney, Sark, or Man, respectively, or within any bay, harbour, river, or creek of or belonging to any one of the said islands; any such vessel or boat so found or discovered, having on board or in any manner attached thereto, or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner, any spirits (*b*) not being in a cask or package containing *forty* (*c*) gallons at the least, or any tea exceeding six pounds weight in the whole, or any tobacco or snuff not being in a cask or package containing *four hundred and fifty pounds* (*d*) weight at least, or being packed separately in any manner within any cask or package (*e*), or any cordage or other articles adapted and prepared for slinging or sinking small casks, or any casks or other vessels whatsoever of less size or content than forty gallons, of the description used for the smuggling of spirits, then and in every such case the said spirits, tea, tobacco, or snuff, together with the casks or packages containing the same, and the cordage or other articles, casks, and other vessels of the description aforesaid, and also the vessel or boat, shall be forfeited" (*f*).

Alteration of s. 2 by 6 & 7 Will. 4, c. 60, s. 11.

Owing, however, to the list of articles prohibited from importation in s. 58, of the 3 & 4 Will. IV. c. 52, having been materially altered by subsequent enactments, (*see ante*, p. 513, "II. Regulation of Customs,") the above section (s. 2) was amended by the 6 & 7 Will. IV. c. 60, s. 11, which enacts, "that in all cases where casks or packages containing spirits, tobacco, or snuff, found on board vessels within any such distances, are of such size or dimensions as may be legally imported into the United Kingdom, no such forfeiture, detention, and prosecution shall take place, but that in all other respects the forfeitures, detentions, and prosecutions set forth in the said act shall attach and be in force as if this act had not been made."

Any vessel or boat arriving within United Kingdom, having prohibited goods on board forfeited, unless there was no want of care in master or owner.

Sect. 3. "That if any vessel or boat whatever shall arrive, or shall be found or discovered to have been within any port, harbour, river, or creek of the United Kingdom, not being driven thereinto by stress of weather, or other unavoidable accident, having on board or in any manner attached thereto, or having had on board or in any manner

(*a*) See note (*a*), *ante*, p. 536.

(*b*) Except spirits in bottles, see 3 & 4 Will. IV. c. 52, s. 58; and except rum, see this act, sect. 4.

(*c*) Restrictions on all spirits not being perfumed, or medicinal, or rum of and from British possessions, extended to 20 gallons, by 6 & 7 Will. 4, c. 60, s. 4.

(*d*) See alteration of this weight, *ante*, p. 513, in the altered list of prohibitions; all these sections must be understood in connection with the 6 & 7 Will. IV. c. 60, s. 11.

(*e*) For some exceptions, see sect. 4.

(*f*) Cases on the former acts against smuggling, *Lockyer* v. *Offley*, 1 *Term Rep.* 200; and *ex parte Pain*, 5 *B. & Cres.* 251; 7 *D. & R.* 678, S. C.; *re Nunn*, 8 *B. & Cres.* 644, 3 *Man. & Ry.* 75; *Sowden's case*, 4 *B. & Ald.* 294.

Vessels and boats.

3 & 4 Will. 4, c. 53.

attached thereto, or conveying or having conveyed in any manner, within any *such port, harbour, river, or creek*, any spirits not being in a cask or package containing *forty gallons* (*a*) at the least, or any tobacco or snuff not being in a case or package containing *four hundred and fifty pounds* (*b*) weight at least, or being packed separately in any manner within any case or package, every such vessel or boat, together with such spirits or tobacco or snuff, shall be forfeited: provided always, that if it shall be made appear to the satisfaction of the commissioners of his Majesty's Customs that the said spirits, tobacco, or snuff were on board without the knowledge or privity of the owner or master of such vessel or boat, and without any wilful neglect or want of reasonable care on their or either of their behalves, that then and in such case the said commissioners shall and they are hereby authorized and required to deliver up the said vessel or boat to the owner or master of the same."

Certain cases in which vessels shall not be forfeited for having on board tobacco, snuff, spirits, tea, or segars (*b*).

Sect. 4. "That nothing herein contained shall extend to render any vessel liable to forfeiture on account of any tobacco (*b*) or snuff from the East Indies, being in packages of one hundred pounds weight each at least, or on account of any segars being in packages of one hundred pounds weight each at least, or on account of any tobacco made up in rolls, being the produce of and imported from the state of Columbia, and in packages containing three hundred and twenty pounds weight each at least, or on account of any tobacco of the dominions of the Turkish empire which may be separated or divided in any manner within the outward package, provided such package be a hogshead, cask, chest, or case containing four hundred and fifty pounds weight net at least, or on account of any rum of and from the British plantations, in casks containing twenty gallons at the least, or on account of any spirits, tea, or tobacco really intended for the consumption of the seamen and passengers on board during their voyage, and not being more in quantity than is necessary for that purpose, or to render any square-rigged vessel liable to forfeiture on account of any tea, or of any spirits in glass bottles, being really part of the cargo of such ship, and included in the manifest of such ship, or to render any vessel liable to forfeiture if really bound from one foreign port to another foreign port, and pursuing such voyage, wind and weather permitting" (*c*).

Vessels belonging to his Majesty's subjects, or having one half of the persons on board subjects of his Majesty throwing overboard goods during chase, forfeited, and persons escaping deemed subjects.

Sect. 5. "That when any vessel or boat belonging in the whole or in part to his Majesty's subjects, or having *one half of the persons on board* subjects of his Majesty, shall be found within one hundred leagues of the coast of this kingdom, and shall not bring to upon signal made by any vessel or boat in his Majesty's service, or in the service of the revenue, hoisting the proper pendant and ensign, in order to bring such vessel or boat to, and thereupon chase shall be given, if any person or persons on board such vessel or boat so chased shall, during the chase or before such vessel or boat shall bring to, throw overboard any part of the lading of any such vessel or boat, or shall stave or destroy any part of such lading, to prevent seizure thereof, that then and in such case the said vessel or boat shall be forfeited; and all persons escaping from such vessels or boats, or from any foreign vessel or boat, during any chase made thereof by any vessel or boat in his Majesty's service or in the service of the revenue, shall be deemed and taken to be subjects of his Majesty, unless it shall be proved to the contrary."

5 & 6 Vict. c. 47, s. 36.

The 5 & 6 Vict. c. 47, s. 36, after reciting the above section, and that

(*a*) See note (*c*), p. 537.

(*b*) As to certain tobacco allowed to be imported, *vide* 5 & 6 Vict. c. 47, s. 6.

(*c*) See as to alteration of weight to be allowed in importation, and regulations as to spirits, the list in sect. 58 of the 3 & 4 Will. IV. c. 52, *ante, II. Regulations of Customs*, and 6 & 7 Will. IV. c. 60, s. 11, *ante*, p. 537.

Vessels and boats.

"in some cases the vessels from whence the goods are thrown overboard as aforesaid, or on board which such goods are staved or destroyed as aforesaid, are not liable to seizure, although the persons found on board, being subjects of her Majesty, are liable to detention and prosecution;" enacts "that from and after the passing of this act, every vessel not being square-rigged, and any boat belonging in the whole or in part to her Majesty's subjects, or having on board *one or more* of her Majesty's subjects, which shall be found or discovered to have been within four leagues of that part of the United Kingdom which is between the North Foreland on the coast of Kent, and Beachy Head on the coast of Sussex, or within eight leagues of any other part of the United Kingdom, from which any part of the lading of such vessel or boat shall have been thrown overboard, or on board which vessel or boat any of the goods on board shall be staved or destroyed to prevent seizure, shall be forfeited."

If one of the persons on board a subject of her Majesty, vessel forfeited.

3 & 4 Will 4, c. 53.

Sect. 6. "That if any vessel or boat whatever shall be found within the limits of any port of the United Kingdom with a cargo on board, and such vessel or boat shall afterwards be found light or in ballast, and the master is unable to give a due account of the port or place within the United Kingdom where such vessel or boat shall have legally discharged her cargo, such vessel or boat shall be forfeited."

Vessels in port with cargo, and afterwards found in ballast and cargo unaccounted for, forfeited.

Sect. 7. "That no vessel or boat belonging wholly or in part to his Majesty's subjects shall sail from Guernsey, Jersey, Alderney, Sark, or Man, without a clearance, whether in ballast or having a cargo; and if with a cargo, the master shall give bond to his Majesty, in double the value of the vessel or boat and of the cargo, for duly landing the same at the port for which the vessel clears; and every such vessel or boat not having such clearance, or which, having a clearance for a cargo, shall be found light, or with any part of the cargo discharged before delivery thereof at the port specified in the clearance, (unless through necessity or for preservation of the vessel or boat, to be proved to the satisfaction of the commissioners of his Majesty's Customs), shall be forfeited."

Regulations as to vessels sailing from Guernsey, Jersey, &c.

Sect. 8. "That in case any vessel or boat liable to seizure or examination under any act or law for the prevention of Smuggling shall not bring to on being required so to do, on being chased by any vessel or boat in his Majesty's navy having the proper pendant and ensign of his Majesty's ships hoisted, or by any vessel or boat duly employed for the prevention of Smuggling, having a proper pendant and ensign hoisted, it shall be lawful for the captain, master, or other person having the charge or command of such vessel or boat in his Majesty's navy, or employed as aforesaid, (first causing a gun to be fired as a signal), to fire at or into such vessel or boat; and such captain, master, or other person acting in his aid or assistance, or by his direction, shall be and he is hereby indemnified and discharged from any indictment, penalty, action, or other proceeding for so doing."

Vessels to bring to on being chased by vessels of the navy or in preventive service; not bringing to, may be fired into (a).

Sect. 9. "That if any person or persons shall from and after the passing of this act wear, carry, or hoist in or on board any vessel or boat whatever belonging to any of his Majesty's subjects, whether the same be merchant or otherwise, without particular warrant for so doing from his Majesty, or his high admiral of Great Britain, or the commissioners for executing the office of high admiral of Great Britain, his Majesty's jack, commonly called the union jack, or any pendant, ensign, or colours usually worn by his Majesty's ships, or any flag, jack, pendant, ensign, or colours resembling those of his Majesty, or those used on board his Majesty's ships, or any other ensign or colours than the ensign or colours by any proclamation of his Majesty now in force, or hereafter to be issued prescribed to be worn, then and in every such case the master or other person having the charge or command thereof, or the owner or

Vessels belonging to his Majesty's subjects not to hoist any colours usually worn by his Majesty's ships.

(a) *Rex* v. *Reynolds, Russell & Ry. Crown Cas.* 465.

Vessels and boats.

3 & 4 Will. 4, c. 53.

owners being on board the same, and every other person so offending, shall forfeit and pay the sum of fifty pounds; and that it shall be lawful for any officer or officers of his Majesty's navy on full pay, or for any officer or officers of Customs or Excise, to enter on board any such vessel or boat, and to seize any such flag, jack, pendant, ensign, or colours, and the same shall thereupon be forfeited."

4 Will. 4, c. 13, s. 11. None of his Majesty's subjects to hoist in their vessels the union jack or any pendants, &c. usually worn in his Majesty's ships and prohibited to be worn by proclamation of 1st Jan 1800, under a penalty of 50*l*.

Certain doubts having arisen on the construction of the above section, the 4 Will. IV. c. 13, s. 11, after reciting that "whereas his late Majesty King George the Third, by his royal proclamation bearing date the first day of January one thousand eight hundred and one, was pleased, with the advice of his privy council, to order and appoint what ensign or colours should be borne at sea by merchant ships or vessels belonging to any of his Majesty's subjects of the United Kingdom of Great Britain and Ireland, and of the dominions thereunto belonging, thereby charging and commanding all his Majesty's subjects whatsoever that they should not presume to wear in any of their ships or vessels his Majesty's jack commonly called the union jack, nor any pendants nor any such colours as are usually worn by his Majesty's ships, without particular warrant for their so doing from his Majesty, or his high admiral of Great Britain, or the commissioners for executing the office of lord high admiral for the time being; and also commanding his Majesty's subjects that without such warrant as aforesaid they should not presume to wear on board their ships or vessels any flags, jacks, pendants, or colours made in imitation of or resembling those of his Majesty, or any kind of pendant whatsoever, or any other ensign than the ensign described in the margin of the said proclamation: and whereas by an act of the last session of Parliament, intituled '*An Act for the Prevention of Smuggling*,' a penalty of fifty pounds is imposed on every person who shall wear, carry, or hoist in or on board any vessel or boat whatever belonging to any of his Majesty's subjects without particular warrant for that purpose, his Majesty's jack, or any pendant, ensign, or colours as therein mentioned; and whereas it is expedient that all doubts that may have been entertained as to the law on this subject should be removed, and that further provision should be made for carrying the said proclamation into effect; be it therefore enacted and declared, that from and after the passing of this act it shall not be lawful for any of his Majesty's subjects whomsoever to hoist, carry, or wear in or on board any ship, vessel, or fishing boat, or any other vessel or boat whatever, whether merchant or otherwise, belonging to any of his Majesty's subjects, his Majesty's jack commonly called the union jack, or any pendant or any such colours as are usually worn by his Majesty's ships, or any flag, jack, pendant, or colours whatever made in imitation of or resembling those of his Majesty, or any kind of pendant whatsoever, or any ensign or colours whatever other than those prescribed by the said proclamation; and that if any person or persons shall nevertheless presume to hoist, carry, or wear in or on board any ship or vessel, fishing boat, or other vessel or boat whatever, belonging to any of his Majesty's subjects, whether the same be merchant or otherwise, his Majesty's jack commonly called the union jack, or any pendant or colours such as are commonly worn by his Majesty's ships, or any jack, flag, pendant, or colours whatever made in imitation of or resembling those of his Majesty, or any kind of pendant whatever, without such warrant as aforesaid, or any other ensign or colours than the ensign or colours prescribed by the said proclamation to be worn, then and in every such case the master or other person having charge of such ship, vessel, or boat, or the owner or owners thereof being on board the same, and every other person so offending, shall for every such offence forfeit and pay a sum not exceeding 500*l*., to be recovered, with costs of suit, either in the high court of admiralty of England, or in any vice admiralty court in his Majesty's colonies, or in any of his Majesty's courts of king's bench or exchequer at West-

3 & 4 Will. 4, c. 53.

Vessels and boats.

3 & 4 Will. 4, c. 53.

minster or Dublin, at the suit of his Majesty's attorney-general, or in the courts of session or exchequer in Scotland respectively; and that it shall be lawful for any officer of his Majesty's navy or marines belonging to any of his Majesty's ships, or any officer of the Customs or Excise, to enter on board any ship, vessel, or boat so hoisting, wearing, or carrying any jack, flag, ensign, pendant, or colours prohibited by the said proclamation and by this act to be hoisted, worn, or carried, and to seize and take away the same, and the same shall thereupon become forfeited."

Vessels, &c. used in removal of run goods forfeited.

Sect. 10. "That all vessels and boats made use of in the removal, carriage, or conveyance of any goods liable to forfeiture under this or any other act relating to the revenue of Customs shall be forfeited."

Boats of vessels to have name of vessel, port, and master.

Sect. 11. "That the owner of every vessel belonging in the whole or in part to any of his Majesty's subjects, shall paint or cause to be painted upon the outside of the stern of every boat belonging to such vessel the name of such vessel, and the port or place to which she belongs, and the master's name within the transum, in white or yellow roman letters, not less than two inches in length, on a black ground, on pain of the forfeiture of such boat not so marked, wherever the same shall be found."

Boats not belonging to ships to have name of owner and port.

Sect. 12. "That the owner of every boat not belonging to any vessel shall paint or cause to be painted upon the stern of such boat, in white or yellow roman letters of two inches in length, on a black ground, the name of the owner or owners of the boat, and the port or place to which she belongs, on pain of the forfeiture of such boat not so marked, wherever the same shall be found."

Vessels and boats used in piloting or fishing to be painted black and not to be painted like preventive boats.

Sect. 13. "That the owner or owners of every vessel or boat employed on the coasts of the United Kingdom in piloting or fishing shall paint or tar every such vessel or boat, or cause the same to be painted or tarred, entirely black, except the name or other description now required by law to be painted on such vessel or boat; and every such vessel or boat found not so painted or tarred, and every boat so painted as to resemble any boat usually employed for the prevention of smuggling or in any other employment in his Majesty's service, shall be forfeited: provided always, that nothing herein contained shall extend to prevent any distinguishing mark from being placed on any such vessel or boat, or to be otherwise painted if the commissioners of his Majesty's Customs shall think proper to allow the same, and which shall be so expressed in the license of the said vessel or boat."

British vessels having secret places for concealing, or devices for running goods, and foreign vessels not square-rigged having goods in secret places, forfeited.

Sect. 14. "That all vessels and boats belonging in the whole or in part to his Majesty's subjects, having false bulkheads, false bows, double sides or bottoms, or any secret or disguised place whatsoever in the construction of the said vessel or boat adapted for the purpose of concealing goods, or having any hole, pipe, or other device in or about the vessel or boat adapted for the purpose of running goods, shall be forfeited, with all the guns, furniture, ammunition, tackle, and apparel belonging to such vessel or boat; and that all foreign vessels or boats, not being square-rigged, coming to or arriving at any port of the United Kingdom, having on board any goods liable to the payment of duties, or prohibited to be imported into the United Kingdom, concealed in false bulkheads, false bows, double sides or bottoms, or any secret or disguised place whatsoever in the construction of the said vessel or boat, shall be forfeited."

Goods concealed on board forfeited, and all goods packed therewith.

Sect. 15. "That if any goods which are subject to any duty or restriction in respect of importation, or which are prohibited to be imported into the United Kingdom, shall be found concealed in any manner on board any vessel, or shall be found, either before or after landing, to have been concealed in any manner, that then and in such case all such goods and all other goods which shall be packed with them, shall be forfeited."

Licenses.

Vessels of certain

Sect. 16. "That all vessels belonging in the whole or in part to his

Licenses.

3 & 4 Will. 4, c. 53.

proportions not being square-rigged, or armed for resistance, to be licensed.

Majesty's subjects, not being square-rigged or propelled by steam, and all vessels belonging as aforesaid, whether propelled by steam or otherwise, *being of less burthen than* 200 *tons*, of which the length is to the breadth in a greater proportion than three feet six inches to one foot, and all such last-mentioned vessels carrying arms for resistance, and all vessels of more than 200 tons burthen, belonging as aforesaid, armed with more than two carriage guns of a calibre exceeding four pounds, and with more than two muskets for every ten men, and all boats belonging as aforesaid, which shall be found within one hundred leagues of the coast of the United Kingdom, shall be forfeited, unless the owners thereof shall have obtained a license from the commissioners of his Majesty's Customs in the manner hereinafter directed."

5 & 6 Vict. c. 47, s. 32.

The 3 & 4 Will. 4, c. 53, s 16, repealed as to granting licenses for vessels of less burthen than 200 tons, of which the length is to the breadth in a greater proportion than three feet six inches to one foot, in cases where such vessels have been measured under 5 & 6 Will. 4, c 56.

The 5 & 6 Vict. c. 47, s. 32, has made a material alteration with respect to vessels of less burthen than 200 tons and measured according to the terms of the 5 & 6 Will. IV. c. 56. For after reciting that "Whereas by the last-mentioned act the owners of certain vessels of less burthen than 200 tons are required to procure a license from the commissioners of her Majesty's Customs for navigating the same: And whereas by an act passed in the fifth and sixth years of the reign of his said late Majesty King Will. IV. intituled, '*An Act to regulate the Admeasurement of the Tonnage and Burthen of the Merchant Shipping of the United Kingdom*, ships or vessels are required to be measured as therein directed: And whereas such new measurement materially affects the nominal tonnage of vessels, and thereby subjects owners of certain vessels to the necessity of obtaining a license for them who were not so subject before the passing of the said last-mentioned act;'" enacts, "That so much of the said first-mentioned act as enacts that all vessels belonging to his Majesty's subjects, whether propelled by steam or otherwise, being of less burthen than 200 tons, of which the length is to the breadth in a greater proportion than three feet six inches to one foot, shall be forfeited, unless the owners thereof shall have obtained a license from the commissioners of his Majesty's Customs in the manner thereinafter directed, shall be repealed with respect to all vessels the tonnage whereof has been or shall be settled according to the principles of the said act to regulate the admeasurement of the tonnage and burthen of the merchant shipping of the United Kingdom."

License required for vessels measured under the 5 & 6 Will. 4, c 56, when of less burthen than 170 tons, of which the length is in a greater proportion to the breadth.

And by sect. 33 of the 5 & 6 Vict. c. 47, it is enacted, "That all vessels belonging in the whole or in part to her Majesty's subjects, the tonnage whereof has been or shall be settled according to the principles of the said last-mentioned Act, whether propelled by steam or otherwise, being of less burthen than 170 tons, of which the length is to the breadth in a greater proportion than three feet six inches to one foot, shall be forfeited, unless the owners thereof shall have obtained a license from the commissioners of her Majesty's Customs in the manner directed by the said Act for the prevention of smuggling."

3 & 4 Will. 4, c. 53, s. 17.

Vessels and boats belonging to his Majesty's subjects not to be navigated by a greater number of persons than herein mentioned, unless licensed.

Sect. 17. "That every vessel or boat belonging in the whole or in part to his Majesty's subjects, or whereof one-half of the persons on board shall be subjects of his Majesty, (not being a lugger, and at the time fitted and rigged as such), which shall be navigated by a greater number of men (officers and boys included) than in the following proportions; (that is to say), if of thirty tons or under, and above five tons, four men; if of sixty tons or under, and above thirty tons, five men; if of eighty tons or under, and above sixty tons, six men; if of one hundred tons or under, and above eighty tons, seven men; and above that tonnage, one man for every fifteen tons of such additional tonnage; or if a lugger, then in the following proportions; (that is to say,) if of thirty tons or under, eight men; if of fifty tons or under, and above thirty tons, nine men; if of sixty tons or under, and above fifty tons, ten men; if of eighty tons or under, and above sixty tons, eleven men; if of one hundred tons or under, and above eighty tons, twelve men; and if above one hundred tons, one man for every ten tons of such additional ton-

Licenses.

3 & 4 Will. 4, c. 53.

nage, which shall be found within one hundred leagues of the coast of the United Kingdom, shall be forfeited, unless such vessel, boat, or lugger shall be especially licensed for that purpose by the commissioners of his Majesty's Customs."

Boats used in fishing on the coast of Scotland not required to have license.

But by the 6 & 7 Will. IV. c. 60, s. 8, after reciting the above act, enacts, that, "From and after the passing of this Act" (13th August 1836) "the owners of boats solely engaged in fishing on the coast of Scotland shall not be required to obtain licenses for navigating the same from the commissioners of his Majesty's Customs under the provisions of the same recited Act."

Certain particulars to be inserted in licenses for vessels and boats.

Sect. 18. "That every license granted by the commissioners of his Majesty's Customs for any vessel or boat requiring license under this act shall contain the proper description of such vessel or boat, the name or names of the owner or owners, with his or their place or places of abode, and the manner and the limits in which the same is to be employed, and, if armed, the numbers and description of arms, and the quantity of ammunition, together with any other particulars which the said commissioners may require and direct; and that it shall be lawful for the commissioners of his Majesty's Customs to restrict the granting of a license for any vessel or boat in any way that they may deem expedient for the security of the revenue."

Licenses may be restricted by commissioners of Customs.

Owners to give security by bond, with condition herein mentioned.

Sect. 19. "That before any such license shall be issued or delivered, or shall have effect for the use of such vessel or boat, the owner or owners of every such vessel or boat shall give security by bond in the single value of such vessel or boat, with condition as follows: (that is to say,) that the vessel or boat shall not be employed in the importation, landing, or removing of any prohibited or uncustomed goods, contrary to the true intent and meaning of this act, or any other act relating to the revenues of Customs or Excise, nor in the exportation of any goods which are or may be prohibited to be exported, nor in the relanding of any goods contrary to law, nor shall receive or take on board or be found at sea or in port with any goods subject to forfeiture, nor shall do any act contrary to this act, or any act hereafter to be made relating to the revenues of Customs or Excise, or for the protection of the trade and commerce of the United Kingdom, nor shall be employed otherwise than mentioned in the license, and within the limits therein mentioned; and in case of loss, breaking up, or disposal of the vessel or boat, that the license shall be delivered, within six months from the date of such loss, breaking up, or disposal of such vessel or boat to the collector or principal officer of Customs at the port to which such vessel or boat shall belong; and that no such bond given in respect of any boat shall be liable to any stamp duty."

Penalty not to exceed 1000*l.* or single value of vessel.

Sect. 20. "That nothing herein contained shall authorize the requiring any bond in any higher sum than one thousand pounds, although the single value of the vessel or boat for which such license is to be issued may be more than one thousand pounds."

License bonds given by minors to be valid.

Sect. 21. "That all bonds given by persons under the age of twenty-one years, in pursuance of the directions herein contained, shall be valid and effectual to all intents and purposes, any thing in any act, or any law or custom, to the contrary in anywise notwithstanding."

Vessels not to be used in any manner not mentioned in the license.

Sect. 22. "That when any vessel or boat shall be found or discovered to have been used or employed in any manner or in any limits other than such as shall be specified in the license hereby required, or if such license shall not be on board such vessel or boat, or shall not at any time be produced and delivered for examination to any officer or officers of the army, navy, or marines duly employed for the prevention of smuggling, and on full pay, or any officer of Customs or Excise, demanding the same, that then and in every such case such vessel or boat, and all the goods laden on board, shall be forfeited."

Certain vessels, &c. not required to be licensed.

Sect. 23. "Provided that nothing herein contained shall extend or be deemed or taken to extend to any vessel, boat, or lugger belonging to

Licenses.

3 & 4 Will. 4, c. 53.

any of the Royal Family, or being in the service of the navy, victualling, ordnance, Customs, Excise, or post office, nor to any whale boat or boat solely employed in the fisheries, nor to any boat belonging to any square-rigged vessel in the merchant service, nor to any life boat or tow boat used in towing vessels belonging to licensed pilots, nor to any boat used solely in rivers or inland navigation, nor to any boats solely used in fishing on the coasts of the North and West Highlands of Scotland (*a*), nor to any boats so used on the coast of Ireland."

Penalty for counterfeiting or falsifying licenses.

Sect. 24. "That if any person or persons shall counterfeit, erase, alter, or falsify, or cause to be counterfeited, erased, altered, or falsified, any license so to be granted as aforesaid, or shall knowingly make use of any license so counterfeited, erased, altered, or falsified, such person or persons shall for every such offence forfeit the sum of five hundred pounds."

How long bonds are to be in force.

Sect. 25. "That no bond given on account of the license of any vessel or boat under the said act for the prevention of smuggling shall be cancelled until the space of twelve months after the license for which such bond had been entered into shall have been delivered up to the proper officer of the Customs, and such bond shall remain in full force and effect for twelve months after the delivering up of the licenses aforesaid."

Licenses and bonds granted previous to this act to continue valid.

Sect. 26. "That all licenses for any vessels or boats granted in pursuance of any act relating to the Customs shall continue valid for all the purposes for which such licenses were required, and all bonds given in pursuance of any such act shall continue valid and may be enforced, any thing herein contained notwithstanding."

Provisions as to licenses to extend to Guernsey, &c.

Sect. 27. "That all the provisions herein contained relating to the licensing of vessels and boats shall extend to the islands of Guernsey, Jersey, Alderney, Sark, and Man."

Vessels and goods.

Goods liable to forfeiture, with the boats, &c. in removal.

Sect. 28. "That if any goods liable to the payment of duties shall be unshipped from any vessel or boat in the United Kingdom or the Isle of Man, (Customs or other duties not being first paid or secured), or if any prohibited goods whatsoever shall be imported into any part of the United Kingdom or the Isle of Man, or if any goods whatsoever which shall have been warehoused or otherwise secured in the United Kingdom, either for home consumption or exportation, shall be clandestinely or illegally removed from or out of any warehouse or place of security, that then and in such case all such goods as aforesaid shall be forfeited, together with all horses and other animals, and all carriages and other things, made use of in the removal of such goods."

Spirits and tobacco found without permit to be deemed run.

Sect. 29. "That all spirits or tobacco which shall be found removing without a legal permit for the same shall be deemed to be spirits or tobacco respectively liable to and unshipped without payment of duty, unless the party in whose possession the same shall be found or seized shall prove to the contrary."

Restricted goods to be deemed run.

Sect. 30. "That all goods the importation of which is in any way restricted, which are of a description admissible to duty, and which shall be found and seized in the United Kingdom under any law relating to the Customs or Excise, shall for the purpose of proceeding for the forfeiture of them, or for any penalty incurred in respect of them, be described in any information exhibited on account of such forfeiture or penalty as goods liable to and unshipped without payment of duties."

Prohibited goods shipped or waterborne, forfeited in certain cases.

Sect. 31. "That if any goods *which are* (*b*) *prohibited to be exported* shall be put on board any vessel or boat with intent to be laden or shipped for exportation, or shall be brought to any quay, wharf, or other place

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(*a*) See 6 & 7 Will. IV. c. 56, s. 8, *ante*, p. 543.

(*b*) "*Which are or may be.*" See construction of 8 Anne, in *Attorney General* v. *Saggers*, 1 *Price Rep.* 182.

in the United Kingdom in order to be put on board any vessel or boat for the purpose of being exported, or if any goods which are prohibited to be exported shall be found in any package produced to the officer or officers of the Customs as containing goods not so prohibited, that then and in every such case, not only all such prohibited goods, but also all other goods packed therewith, shall be forfeited."

Vessels and goods.

3 & 4 Will. 4, c. 53.

Sect. 32. "That all vessels and boats, and all goods whatsoever, liable to forfeiture under this or any other act relating to the revenue of Customs shall and may be seized in any place, either upon land or water, by any officer or officers of his Majesty's army, navy, or marines, duly employed for the prevention of smuggling, and on full pay, or by any officer or officers of Customs or Excise, or by any person having authority to seize from the commissioners of his Majesty's Customs or Excise; and all vessels, boats, and goods so seized shall, as soon as conveniently may be, be delivered into the care of the proper officer appointed to receive the same" (*a*).

Vessels, boats, and goods may be seized by officers herein mentioned, and delivered to proper officer.

Sect. 33. "That if any officer or officers of the Customs or Excise, or any officer or officers of the army, navy, or marines, duly employed for the prevention of smuggling, and on full pay, or any other person or persons whatsoever duly employed for the prevention of smuggling, shall make any collusive seizure, or deliver up, or make any agreement to deliver up or not to seize, any vessel or boat or any goods liable to forfeiture, or shall take any bribe, gratuity, recompence, or reward for the neglect or nonperformance of his duty, every such officer or other person shall forfeit for every such offence the sum of five hundred pounds, and be rendered incapable of serving his Majesty in any office whatever, either civil or military; and every person who shall give or offer, or promise to give, or procure to be given, any bribe, recompence, or reward to, or shall make any collusive agreement with, *any such officer or person as aforesaid* (*b*), to induce him in any way to neglect his duty, or to do, conceal, or connive at any act whereby any of the provisions of any act of parliament relating to the revenue of Customs may be evaded, shall forfeit the sum of two hundred pounds."

Penalty on officers making collusive seizures or taking bribes, and on persons offering them.

Sect. 34. "That it shall and may be lawful to and for any officer or officers of the army, navy, or marines, duly employed for the prevention of smuggling, and on full pay, or for any officer or officers of Customs (*c*),

Vessels and persons may be searched.

(*a*) A judicial sale of a vessel found at sea and brought into port as derelict, under an order of the Instance Court of the Admiralty, on the part of the salvors and claimant (without fraud), is available against the crown's right of seizure for a previous forfeiture, incurred by the ship having been guilty of a forfeitable offence against the revenue laws, although the crown was not a party to the proceeding in the Admiralty Court, other than by the King's procurator-general claiming the vessel as an *Admiralty droit;* and although no decision of *droit* or no *droit* was awarded, and the sale took place *pendente lite* under an interlocutory order.

The crown should have claimed before the court, either as against the ship in the first instance, or subsequently against the proceeds of the sale, which were paid into the registry to answer claims under the order of sale, or have moved a prohibition.

The warrant for arresting a ship by the Admiralty, and the process of citation, is notice to all the world of the subsequent proceedings.

In pleading such sale in defence to an information, the facts should be put specially on the record, so that the attorney general might demur to or traverse them. *Attorney General* v. *Norstedt*, (claiming the ship Triton), 3 *Price*, 97.

In British possessions abroad, as to power of seizure by officers, &c., see 4 & 5 Will. IV. c. 89, s. 23, *post*.

(*b*) The information for offering a bribe must show that the officer came within the description referred to, and whose duty it was to seize. *The King* v. *Everett*, 8 *B. & Cres.* 114; 1 *M. & R.* 623.

(*c*) This act seems to extend to all officers of Customs, though they be not within their own limits, and which removes the objection in the *Attorney General* v. *Jefferys*, *M'Clel. Rep.* 270; and see Amending Act, 4 & 5 Will. IV. c. 89, sect. 23, *post*, as to the like powers in possessions abroad.

Vessels and goods.

3 & 4 Will. 4, c. 53.

producing his or their warrant or deputation (if required), to go on board any vessel which shall be within the limits of any of the ports of this kingdom, and to rummage and to search the cabin and all other parts of such vessel for prohibited and uncustomed goods, and to remain on board such vessel during the whole time that the same shall continue within the limits of such port, and also to search any person or persons, either on board or who shall have landed from any vessel, provided such officer or officers shall have good reason to suppose that such person or persons hath or have any uncustomed or prohibited goods secreted about his, her, or their person or persons; and if any person shall obstruct any such officer or officers in going or remaining on board, or in entering or searching such vessel or person, every such person shall forfeit and lose the sum of one hundred pounds."

Before a justice should they require it

Sect. 35. "That before any person shall be searched by any such officer or officers as aforesaid, it shall be lawful for such person to require such officer or officers to take him or her before any justice of the peace, or before the collector, comptroller, or other superior officer of the Customs, who shall determine whether there is reasonable ground to suppose that such person has any uncustomed or prohibited goods about his or her person; and if it shall appear to such justice, collector, comptroller, or other superior officer of Customs, that there is reasonable ground to suppose that such person has any uncustomed or prohibited goods about his or her person, that then such justice, collector, comptroller, or other superior officer of Customs shall direct such person to be searched in such manner as he shall think fit; but if it shall appear to such justice, collector, comptroller, or other superior officer of Customs that there is not reasonable ground to suppose that such person has any uncustomed or prohibited goods about his or her person, that then such justice, collector, comptroller, or other superior officer of Customs shall forthwith discharge such person, who shall not in such case be liable to be searched; and every such officer or officers as aforesaid is and are hereby authorized and required to take such person, upon demand, before any such justice, collector, comptroller, or other superior officer of Customs, detaining him or her in the meantime; provided always, that no person being a female shall be searched by any other person than a female duly authorized for that purpose by the commissioners of his Majesty's Customs."

Penalty on officers for misconduct.

Sect. 36. "That if any such officer or officers shall not take such person with reasonable dispatch before such justice, collector, comptroller, or other superior officer of Customs, when so required, or shall require any person to be searched by him, not having reasonable ground to suppose that such person has any uncustomed or prohibited goods about his or her person, that such officer shall forfeit and pay the sum of ten pounds."

Penalty on persons denying.

Sect. 37. "That if any passenger or other person on board any vessel or boat shall, upon being questioned by any officer or officers of his Majesty's Customs, whether he or she has any foreign goods upon his or her person, or in his or her possession, deny the same, and any such goods shall, after such denial, be discovered upon his or her person, or in his or her possession, such goods shall be forfeited, and such person shall forfeit treble the value of such goods."

Officers may search houses in certain

Sect. 38. "That it shall and may be lawful for any officer or officers of Customs, or person acting under the direction of the commissioners of his Majesty's Customs, having a writ of assistance under the seal of his Majesty's Court of Exchequer, to take a constable, headborough, or other public officer inhabiting near the place, and in the daytime to enter into and search any house, shop, cellar, warehouse, room, or other place, and in case of resistance to break open doors, chests, trunks, and other packages, there to seize, and from thence to bring, any uncustomed or prohibited goods, and to put and secure the same in the Custom House warehouse in the port next to the place from whence such

Vessels and goods.

3 & 4 Will. 4, c. 53.

goods shall be so taken as aforesaid: provided always, that for the purposes of this act any such constable, headborough, or other public officer, duly sworn as such, may act as well without the limits of any parish, ville, or other place for which he shall be so sworn as within such limits."

Duration of writs of assistance.

Sect. 39. "That all writs of assistance so issued from the Court of Exchequer as aforesaid shall continue and be in force during the whole of the reign in which such writs shall have been granted, and for six months from the conclusion of such reign."

Officers of Customs or Excise may, on probable cause, stop carts, &c. and search for goods.

Sect. 40. "That it shall be lawful for any officer of Customs or Excise, or other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, upon reasonable suspicion, to stop and examine any cart, waggon, or other means of conveyance, for the purpose of ascertaining whether any smuggled goods are contained therein; and if no such goods shall be found, then and in such case the officer or other person so stopping and examining such cart, waggon, or other conveyance, having had probable cause to suspect that such cart, waggon, or other conveyance had smuggled goods contained therein, shall not, on account of such stoppage and search, be liable to any prosecution or action at law on account thereof; and all persons driving or conducting such cart, waggon, or other conveyance, refusing to stop when required so to do in the King's name, shall forfeit the sum of one hundred pounds."

Police officers seizing goods to carry them to Custom House.

Sect. 41. "That if any goods subject or liable to forfeiture under this or any other act relating to the Customs shall be stopped or taken by any police officer or other person acting by virtue of any act of Parliament, or otherwise duly authorized, such goods shall be carried to the Custom House warehouse next to the place where the goods were stopped or taken, and there delivered to the proper officer appointed to receive the same, within forty-eight hours after the said goods were stopped and taken."

Goods stopped by police officers may be retained until trial of persons charged with stealing them.

Sect. 42. "That if any such goods shall be stopped or taken by such police officer on suspicion that the same have been feloniously stolen, it shall be lawful for the said officer to carry the same to the police office to which the offender is taken, there to remain until and in order to be produced at the trial of the said offender; and in such case the officer is required to give notice in writing to the commissioners of his Majesty's Customs of his having so detained the said goods, with the particulars of the same; and immediately after the trial all such goods are to be conveyed and deposited in the Custom House warehouse as aforesaid, to be proceeded against according to law; and in case any police officer making detention of any such goods shall neglect to convey the same to such warehouse, or to give the notice of having stopped the same as before described, such officer shall forfeit the sum of twenty pounds."

Commissioners of treasury, or commissioners of Customs or Excise, may restore seizures, and mitigate or remit penalties.

Sect. 43. "That it shall and may be lawful for the commissioners of his Majesty's treasury, or any three or more of them, for the time being, or for the commissioners of his Majesty's Customs or Excise, by any order made for that purpose under their hands, to direct any vessel, boat, goods, or commodities whatever seized as aforesaid under this or any act relating to the Customs or Excise, or to the trade or navigation of the United Kingdom, or to any of his Majesty's possessions abroad, to be delivered to the proprietor or proprietors, whether condemnation shall have taken place or not, upon such terms and conditions as they may deem expedient, *and which shall be mentioned in the said order* (*a*); and it shall be also lawful for the said commissioners of his Majesty's treasury and the said commissioners of his Majesty's Customs or Excise to mitigate or remit any penalty or fine which shall have been incurred,

(*a*) See case of the *Maria*, 1 *Price, Rep.* 4; from which it appears not to be necessary that any term or condition should be mentioned in the order.

Penalties.

3 & 4 Will. 4, c. 53.

or any part of such penalty or fine incurred under any such act as last aforesaid: provided always, that no person shall be entitled to the benefit of any order for delivery or mitigation unless the terms and conditions expressed in the said order are fully and effectually complied with."

Penalties.

Persons unshipping, harbouring, or having any prohibited or uncustomed goods, to forfeit treble value, or 100*l.*

Sect. 44. "That every person who shall, either in the United Kingdom or the Isle of Man, assist or be otherwise concerned in the unshipping of any goods which are prohibited to be imported into the United Kingdom or into the Isle of Man, or the duties for which have not been paid or secured, or who shall knowingly harbour, keep, or conceal, or shall knowingly permit or suffer to be harboured, kept, or *concealed* (*a*), any goods which shall have been illegally unshipped without payment of duties, or which shall have been illegally removed without payment of the same, from any warehouse or place of security in which they may have been deposited, or any goods prohibited to be imported, or to be used or consumed in the United Kingdom or in the Isle of Man, and every person, either in the United Kingdom or the Isle of Man, to whose hands and possession any such uncustomed or prohibited goods shall knowingly come, or who shall assist or be in anywise concerned in the illegal removal of any goods from any warehouse or place of security in which they shall have been deposited as aforesaid, shall forfeit either the treble value thereof, or the penalty of one hundred pounds, at the election of the commissioners of his Majesty's Customs."

How value to be ascertained.

Sect. 45. "That in all cases where any penalty, the amount of which is at any time to be determined by the value of any goods, is directed to be sued for under any law now in force or hereafter to be made for the prevention of smuggling, or relating to the revenue of Customs or Excise, such value shall be deemed and taken to be according to the rate and price which goods of the like sort or denomination and of the best quality bear at such time, and upon which the duties due upon importation have been paid."

Persons insuring the delivery of prohibited or uncustomed goods to forfeit 500*l.*

Sect. 46. "That every person who by way of insurance or otherwise shall undertake or agree to deliver any goods to be imported from beyond the seas into any port or place in the United Kingdom without paying the duties due on such importation, or any prohibited goods, or who in pursuance of such insurance or otherwise shall deliver or cause to be delivered any uncustomed or prohibited goods, and every aider or abettor of such person, shall for every such offence forfeit the sum of five hundred pounds, over and above any other penalty to which by law he may be liable; and every person who shall agree to pay any money for the insurance or conveyance of such goods, or shall receive or take such goods into his custody or possession, or suffer the same to be so received or taken, shall also forfeit five hundred pounds, over and above any penalty to which by law he may be liable on account of such goods (*b*)."

Penalty on persons offering goods for sale under pretence of being run, or prohibited.

Sect. 47. "That if any person or persons shall offer for sale any goods under pretence that the same are prohibited, or have been unshipped and run on shore without payment of duties, that then and in such case all such goods (although not liable to any duties, or prohibited) shall be forfeited, and the person or persons, and every of them, offering the same for sale shall forfeit the treble value of such goods, or the penalty of one hundred pounds, at the election of the commissioners of his Majesty's Customs."

(*a*) Besides the penalties against smuggling contained in this and other acts, the parties guilty thereof are in general deprived of any right of action relating to the smuggled goods; and see other consequences, 1 *Chitty's Commercial Law*, 784; 3 *Id.* 80, 242, 451, 497, 523, 524; and see cases, *Harrison's Digest*, tit. "*Smuggling*."

(*b*) See construction of 11 Geo. I. c. 30, s. 16, in *Ex parte Ransley*, 3 *Dowl. & R.* 572.

Penalties.

3 & 4 Will. 4, c. 53.

It may be as well to insert here that portion of the 4 Will. IV. c. 13, which repeals or alters the 48th sect. and some of the following sections of the 3 & 4 Will. IV. c. 53.

4 Will. 4, c. 13.

3 & 4 Will. 4, c. 53.

The 4 Will. IV. c. 13 (22nd May, 1834), intituled, "*An act to repeal so much of an act of the last session of parliament, for the prevention of Smuggling, as authorizes magistrates to sentence persons convicted of certain offences to serve his Majesty in his naval service, and to alter and amend the said act,*" after reciting "that an act was passed in the last session of parliament, intituled '*An Act for the prevention of Smuggling,*' and that it is expedient to repeal so much of the said act as authorizes and requires justices of the peace to order persons convicted of certain offences therein mentioned to be carried and conveyed on board any of his Majesty's ships, in order to serve his Majesty in his naval service for the term of five years; and to substitute other provisions in lieu thereof: and that it was also expedient to amend certain other parts of the said act; enacts, "that from and after the passing of this act, *so much of the said act as authorizes and requires justices of the peace to order persons convicted of certain offences therein mentioned to be carried or conveyed on board any of his Majesty's ships, in order to serve his Majesty in his naval service for the term of five years,* and so much of the said act *as imposes certain pecuniary penalties for any of the offences hereinafter next mentioned,* shall be and the same is hereby *repealed.*"

Power of ordering certain offenders to be sent into the naval service for five years, and of imposing certain penalties, repealed.

Persons found on board vessels within prohibited distances, and having prohibited lading (*b*);

Sect. 2. "That every person being a subject of his Majesty, who shall be found (*a*) or discovered to have been on board any vessel or boat (*c*) liable to forfeiture under the said or any other act relating to the Customs, for being found or discovered to have been within any of the distances in the said act mentioned from the United Kingdom or from the Isle of Man, having on board or in any manner attached thereto, or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner, such goods or things as subject such vessel or boat to forfeiture, or who shall be found or discovered to have been within any such distances as aforesaid on

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(*a*) See construction of the word *found*, as here used, and of a similar enactment, *Ex parte Pain*, 7 *D. & R.* 678; 5 *B. & Cres.* 251. (The authority of the justices, &c. to detain must appear on face of commitment; *Kite & Lane's case*, 1 *B. & Cres.* 101, 2 *Dowl. & Ryl.* 212; and see further, *In re Nunn*, 8 *B. & Cress.* 644, 3 *Man. & Ryl.* 75). And as to meaning of the word *found*, see *Attorney General* v. *Delano*, 6 *Price*, 383. See also *In the matter of Peerless*, 1 *Q. B. Rep.* 143.

(*b*) Before the passing of the 5 & 6 Vict. c. 47, a warrant under this act must have shewn a good conviction; the justices only having jurisdiction by the offence being committed in their county or on the high seas, and the offender brought into their county or found in it; this act (the 4 Will. IV. c. 53) not creating any new offence, or altering the jurisdiction, and only changing the punishment; and the words "any two justices" being applicable only to justices having jurisdiction at common law, or under the statute. *In the matter of Peerless*, 1 *Q. B. Rep.* 143.

But see now the 35th section of the 5 & 6 Vict. c. 47, which enacts, "that no warrant of commitment for any offence against any act relating to the Customs shall be held void by reason of any defect in such warrant, nor shall any party be entitled to be discharged out of custody on account of any such defect, provided it be alleged in the said warrant that the said party has been convicted of such an offence, and provided it shall appear to the court or judge before whom such warrant is returned that such conviction proceeded upon good and valid grounds."

(*c*) The 5 & 6 Vict. c. 47, s. 31, declares the powers in the above stat. of 3 & 4 Will. IV. c. 53, to extend to persons found on board her Majesty's ships and vessels,—doubts having arisen whether such persons were previously included.

By the 4 & 5 Will. IV. c. 89, s. 10, the actual expenses incurred by the commitment of smugglers to hard labour is to be paid out of the consolidated Customs, by warrant of the lords commissioners of his Majesty's treasury.

Penalties.

3 & 4 Will. 4, c. 53.

board any vessel or boat from which any part of the cargo or lading of such vessel or boat shall have been thrown overboard, or staved or destroyed to prevent seizure; and every person, not being a subject of his Majesty, who shall be found or discovered to have been on board any vessel or boat liable to forfeiture for any of the causes aforesaid, within one league of the United Kingdom or the Isle of Man; and that all persons who are assembled to the number of three or more (*a*) for the purpose of unshipping, carrying, conveying, or concealing any spirits or tobacco, or any tea or silk, (such tea or silk being of the value of twenty pounds or more), liable to forfeiture under any act relating to the Customs or Excise; and that every person who shall by any means procure or hire, or shall depute or authorize any other to procure or hire, any person or persons to assemble for the purpose of being concerned in the landing or unshipping, or carrying or conveying any goods which are prohibited to be imported, or the duties for which have not been paid or secured; and that every person who shall *obstruct* (*b*) any officer or officers of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer or officers of Customs or Excise, or any person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, in the execution of his or their duty, or in the due seizing of any goods liable to forfeiture by the said act or any other acts relating to the Customs, or who shall rescue or cause to be rescued any goods which have been duly seized, or who shall attempt or endeavour to do so, or shall before or at or after any seizure stave, break, or otherwise destroy any goods, to prevent the seizure thereof or the securing the same; shall, upon being duly convicted (*c*) of any of the said offences before any two justices of the peace, be adjudged by such justices for the first offence to be imprisoned in any house of correction (*d*), and there kept to hard labour for any term not less than six nor greater than nine calendar months; and for the second offence, for any term not less than nine nor greater than twelve calendar months; and for the third offence, or any subsequent offence, for twelve calendar months."

or assembled to the number of three or more to run spirits, tea, tobacco, or silk, or procuring others to assemble to run goods;

or obstructing officers in the execution of their duty;

to be sent to hard labour, for not less than six months for first offence, nine for second, and twelve for third.

3 & 4 Will. 4, c. 53.

Persons unshipping, or concerned in carrying away or concealing, spirits or tobacco, to forfeit 100*l.* and may be detained.

Sect. 49. "That every person whatsoever who shall unship, or be aiding, assisting, or concerned in the unshipping of any spirits or tobacco liable to forfeiture under this or any other act relating to the Customs or Excise, either in the United Kingdom or the Isle of Man, or who shall carry, convey, or conceal, or be aiding, assisting, or concerned in the carrying, conveying, or concealing of any such spirits or tobacco, shall forfeit for such offence the sum of one hundred pounds; and every such person may be detained by any officer or officers of his Majesty's army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or by any officer or officers of Customs or Excise, or other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, and taken before any justice of the peace in the United Kingdom, to be dealt with as hereinafter directed."

Persons carrying, &c. tea or manufactured silk to

Sect. 50. "That every person whatsoever who shall unship, or be aiding, assisting, or otherwise concerned in the unshipping of any tea or

(*a*) See also sections 58 and 60 of the 3 & 4 Will. IV. c. 53, *post*, pp. 552 & 553.

(*b*) *See post*, p. 553, s. 61 of the 3 & 4 Will. IV. c. 53, as to when by *force or violence*.

(*c*) For form of conviction, and warrant of commitment under this statute, *see post*.

(*d*) By 6 & 7 Will. IV. c. 60, s. 9, magistrates may convict offenders convicted of offences against the Customs laws to nearest house of correction when there is none in their jurisdiction. And by sect. 10 of the same act, magistrates may proceed to commit in certain cases without an order from the board of Customs. *See these sections*, *post*, p. 559.

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3 & 4 Will. 4, c. 53.

forfeit treble value, and be liable to detention.

foreign manufactured silk of the value of twenty pounds, liable to forfeiture under any act relating to the Customs or Excise, or who shall carry, convey, or conceal, or be aiding, assisting, or concerned in the carrying, conveying, or concealing of such tea or silk, shall forfeit for every such offence *treble the value* thereof; and every such person shall and may be detained by any officer or officers of his Majesty's army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or by any officer or officers of Customs or Excise, or by any other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, and taken before any justice of the peace in the United Kingdom, to be dealt with as hereinafter directed: provided always, that it shall and may be lawful for such person so detained to give security in treble the amount of the goods seized, by recognizance or otherwise, to the satisfaction of such justice of the peace, to appear at a time and place to be appointed; and that no such person shall be liable to serve his Majesty in his naval service" (*a*).

Where persons are taken *before a justice for any offence under any act relating to the Customs, such justice may order them to be detained a reasonable time.*

Sect. 51. Reciting that "it is expedient that time should be allowed to prepare informations, convictions, and warrants of commitment," declares and enacts, "that where any person or persons shall have been detained by any officer or officers of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or by any officer of Customs or Excise, or any person or persons acting in his or their aid or assistance, or duly employed for the prevention of smuggling, for any offence under this or any other act relating to the Customs, and shall have been taken and carried before any justice of the peace, if it shall appear to such justice that there is reasonable cause to detain such person or persons, such justice may and he is hereby authorized and required to order such person or persons to be detained a reasonable time, and at the expiration of such time to be brought before any two justices of the peace, who are hereby authorized and required finally to hear and determine the matter."

Any person liable to be arrested making his escape, may afterwards be detained by any officer of the Customs.

Sect. 52. "That if any person or persons liable to be detained under the provisions of this or any other act relating to the Customs shall not be detained at the time of so committing the offence for which he or they is or are so liable, or after detention shall make his or their escape, it shall and may be lawful for any officer or officers of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or for any officer of Customs or Excise, or any other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, to detain such person so liable to detention as aforesaid at any time afterwards, and to carry him before any justice of the peace, to be dealt with as if detained at the time of committing the said offence."

Persons making signals to smuggling vessels at sea may be detained, and on conviction to forfeit 100*l.*, or be kept to hard labour for one year.

Sect. 53. "That no person shall, after sunset and before sunrise between the 21st of September and the 1st of April, or after the hour of eight in the evening and before the hour of six in the morning at any other time in the year, make, aid or assist in making, any signal in or on board or from any vessel or boat, or on or from any part of the coast or shore of the United Kingdom, or within six miles of any part of such coasts or shores, for the purpose of giving any notice to any person on board any smuggling vessel or boat, whether any person so on board of such vessel or boat be or be not within distance to notice any such signal; and if any person, contrary to the true intent and meaning of this act, make or cause to be made, or aid or assist in making any such signal, such person so offending shall be guilty of a misdemeanor; and it shall be lawful for any person to stop, arrest, and detain the person or persons who shall so offend, and to carry and convey such person or persons so offending before any one or more of his Majesty's justices of the peace,

(*a*) This liability is now, by the 4 Will. IV. c. 13, done away with in all cases.

Penalties.

3 & 4 Will. 4, c. 53.

residing near the place where such offence shall be committed, who, if he sees cause, shall commit the offender to the next county gaol, there to remain until the next court of oyer or terminer, great session, or gaol delivery, or until such person or persons shall be delivered by due course of law; and it shall not be necessary to prove on any indictment or information that any vessel or boat was actually on the coast; and the *offender or offenders* (*a*) being duly convicted thereof shall, by order of the court before whom such offender or offenders shall be convicted, either forfeit and pay the penalty or forfeiture of one hundred pounds, or, at the discretion of such court, be sentenced or committed to the common gaol or house of correction, there to be kept to hard labour for any term not exceeding one year."

Proof of a signal not being intended to lie on the defendant.

Sect. 54. "Provided that in case any person be charged with or indicted for having made or caused to be made, or been aiding or assisting in making, any such signal as aforesaid, the burthen of proof that such signal so charged as having been made with intent and for the purpose of giving such notice as aforesaid was not made with such intent and for such purpose shall be upon the defendant against whom such charge is made or such indictment is found."

Any person may prevent signals, and enter upon lands for that purpose.

Sect. 55. "That it shall be lawful for any person whatsoever to prevent any signal being made as aforesaid, and to enter and go into and upon any lands for that purpose, without being liable or subject to any indictment, suit, or action for the same."

Sect. 56. Persons resisting officers, or rescuing or destroying goods. (See 4 Will. IV. c. 13, s. 2, *ante*, p. 549.)

Sect. 57. Penalty on procuring others to assemble for unshipping prohibited goods. (See 4 Will. IV. c. 13, s. 2, *ante*, p. 549.)

Felonies.

Three or more armed persons assembled in illegal landing of any goods, or in rescuing of goods seized, guilty of felony.

Sect. 58. "That if any persons to the number of three or more, *armed* (*b*) with fire-arms or other offensive weapons, shall, within the United Kingdom, or within the limits of any port, harbour, or creek thereof, be assembled in order to be aiding and assisting in the illegal landing, running, or carrying away of any prohibited goods, or any goods liable to any duties which have not been paid or secured, or in rescuing or taking away any such goods as aforesaid, after seizure, from the officer of the Customs or other officer authorized to seize the same, or from any person or persons employed by them or assisting them, or from the place where the same shall have been lodged by them, or in rescuing any person who shall have been apprehended for any of the offences made felony by this or any act relating to the Customs, or in the preventing the apprehension of any person who shall have been guilty of such offence, or in case any persons to the number of three or more, so armed as aforesaid, shall, within the United Kingdom, or within the limits of any port, harbour, or creek thereof, be so aiding or assisting, every person so offending, and every person aiding, abetting, or assisting therein, shall, being thereof convicted, be adjudged guilty of felony, and *suffer death as a felon*" (*c*).

Persons maliciously shooting at any boat belonging to the navy, or in the service of the revenue, &c. guilty of felony (*d*).

Sect. 59. "That if any person shall *maliciously shoot* at any vessel or boat belonging to his Majesty's navy, or in the service of the revenue, within one hundred leagues of any part of the coast of the United Kingdom, or shall maliciously shoot at, maim, or dangerously wound

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(*a*) Held that where several were included in one information, *each* was separately liable to the penalty imposed by 18 Geo. I. c. 18, s. 25. *Rex* v. *Clark*, *Cowp.* 610.

(*b*) See a proviso against the like number of persons for similar purposes, but not mentioning the being armed, 4 Will. IV. c. 13, s. 2, *ante*, p. 549.

(*c*) The 1 Vict. c. 91, s. 1, does away with the punishment of death mentioned in these sections, and substitutes instead thereof, transportation for life, or for not less than 15 years, or imprisonment for any term not exceeding 3 years.

(*d*) In *R.* v. *Reynolds*, *cor. Holroyd*, J., at *Newcastle Sum. Ass.* 1821, *and*

Felonies.

3 & 4 Will. 4, c. 53.

any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer of Customs or Excise, or any person acting in his aid or assistance, or duly employed for the prevention of smuggling, in the due execution of his office or duty, every person so offending, and every person aiding, abetting, or assisting therein, shall, being lawfully convicted, be adjudged guilty of felony, and *suffer death as a felon*" (*a*).

Any person in company with four others having prohibited goods, or with one other armed or disguised, guilty of felony.

Sect. 60. "That if any person being in company with more than four other persons be found with any goods liable to forfeiture under this or any other act relating to the revenue of Customs or Excise, or in company with one other person, within five miles of the sea coast or of any navigable river leading therefrom, with such goods, and carrying offensive arms or weapons, or disguised in any way, every such person shall be adjudged guilty of felony, and shall, on conviction of such offence, be transported as a felon for the space of seven years."

Of officers, their protections and rewards (*b*).

Persons assaulting officers by force or violence may be transported.

Sect. 61. "That if any person shall by *force or violence* (*c*) assault, resist, oppose, molest, hinder, or obstruct any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer of Customs or Excise, or other person acting in his or their aid or assistance, or duly employed for the prevention of smuggling, in the due execution of his or their office or duty, such person, being thereof convicted, shall be transported for seven years, or sentenced to be imprisoned in any house of correction or common gaol, and kept to hard labour, for any term not exceeding three years, at the discretion of the court before whom the offender shall be tried and convicted as aforesaid."

Commanding officers of vessels in the service may haul their vessels on shore without being liable to action for so doing.

Sect. 62. "That it shall and may be lawful to and for the commanding officer for the time being of any vessel or boat employed for the prevention of smuggling to haul any such vessel or boat upon any part of the coasts of the United Kingdom, or the shores, banks, or beaches of any river, creek, or inlet of the same, (not being a garden or pleasure ground, or place ordinarily used for any bathing machine or machines), which shall be deemed most convenient for that purpose, and to moor any such vessel or boat on such part of the aforesaid coasts, shores, banks, and beaches below high-water mark, and over which the tide flows on ordinary occasions, and to continue such vessel or boat so moored as aforesaid for such time as the said commanding officer shall deem necessary and proper; and such commanding officer, or person or persons acting under his direction, shall not be liable to any indictment, action, or suit for so doing, any law, statute, custom, or usage to the contrary notwithstanding" (*d*).

Officer, if wounded in service of Customs, to be provided for, &c.

Sect. 63. "That in all cases where any officer or seaman employed in the service of the Customs or Excise shall be killed, maimed, wounded,

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before the judges M. T. following, Russell & Ryan, Crown Cases, 465. An indictment on 52 Geo. III. c. 143, (now repealed, but which contained a similar clause to the above), for shooting at a vessel of the Customs, and also at an officer of the same, on the high seas; held, that to constitute the offence under this statute, the shooting must be *malicious;* and that if a Custom-house vessel chase a smuggler and fire into her without hoisting such a pendant and ensign as the 56 Geo. III. s. 2, c. 103, s. 8, required, the returning the fire will not be malicious.

(*a*) See note (*c*) in p. 552.

(*b*) And see the right of revenue officers to remove any action pending against them into the Court of Exchequer, *Liddon* v. *East*, 1 *Crom. & Jerv.* 12; 2 *Chitty's Gen. Prac.* 316, 317, 396; Limitation of Actions against Custom-house officers, *post.*

(*c*) See penalty for "*obstructing*" merely, 4 Will. IV. c. 13, s. 2, *ante*, p. 549.

(*d*) By the 5 & 6 Vict. c. 47, s. 37, officers, &c. employed for the prevention of smuggling when on duty may patrol the coasts, shores, &c. of United Kingdom, without being liable to an action for so doing.

Officers.

3 & 4 Will. 4, c. 53.

or in any way injured in the due execution of his office, or if any person acting in his aid, or duly employed for the prevention of smuggling, shall be so killed, maimed, wounded, or in any way injured while so aiding such officer or seaman, or so employed, it shall and may be lawful for the commissioners of his Majesty's Customs and Excise respectively to make such provision for the officer or person so maimed, wounded, or injured as aforesaid, or for the widows and families of such as shall be killed, as they shall be authorized and empowered to do by warrant from the lord high treasurer or commissioners of his Majesty's treasury for the time being."

Vessels and goods seized may be disposed of as commissioners shall direct.

Sect. 64. "That all vessels and boats and all goods whatsoever which shall have been seized and condemned for breach of any law relating to the Customs shall be disposed of as soon as conveniently may be after the condemnation thereof, in such manner as the commissioners of his Majesty's Customs shall direct."

Officers' liability to tolls.

By the 1 & 2 Vict. c. 113, s. 10, officers in the coast guard and of the revenue mounted guard in the service of the Customs, when in the discharge of their public duty and in their uniforms, were not subject or liable to payment of any turnpike or other tolls. The 38th section, however, of the 5 & 6 Vict. c. 47, *repeals* so much of the above act as exempts such officers under the above circumstances from the payment of any *turnpike tolls.*

Rewards.

Rewards to officers for detaining smugglers.

By the 3 & 4 Will. IV. c. 53, sect. 65, "that it shall and may be lawful for the commissioners of his Majesty's Customs, and they are hereby authorized and empowered to award to any officer or other person detaining any person liable to detention under this or any other act relating to the revenue of Customs, to be paid upon the conviction of such person, any reward they may think fit to direct, not exceeding the sum of twenty pounds for each person."

Rewards to officers where pecuniary penalties are recovered.

Sect. 66. "That it shall and may be lawful for the commissioners of his Majesty's Customs, and they are hereby authorized, to order the following reward to be paid to any officer or officers or persons as aforesaid by whose means any pecuniary penalty or composition is recovered; (that is to say), one third part of the penalty or sum recovered, except in seizures of silk goods, in which case the officers may receive one-half the penalty or sum recovered."

Rewards to officers making seizures.

Sect. 67. "That it shall and may be lawful for the commissioners of his Majesty's Customs, and they are hereby authorized, to order to be paid, in respect of any seizure made under this or any act relating to the Customs or to trade and navigation, to the person or persons making the same, the following rewards; (that is to say),

In the case of seizures of spirits or tobacco:—

If all the parties concerned in the act which occasions the seizure, being above the age of sixteen years, are detained and convicted, the whole value thereof, such value to be fixed and settled by the lords of the treasury, or by the commissioners of his Majesty's Customs, as hereinafter directed:

If two or more of such parties, not being the whole, are so detained and convicted, seven-eighths of such value:

If one such party, not being the whole of them, but being a seafaring man, is so detained and convicted, three-fourths of such value:

If one such party, not being the whole of them, is detained and convicted, and the vessel or means of conveyance is or are seized and condemned, three-fourths of such value:

If one such party, not being the whole of them, nor being a seafaring man, is so detained and convicted, five-eighths of such value:

Rewards.

3 & 4 Will 4, c. 53.

If the vessel or means of conveyance is seized and condemned without any person being detained, one-third of such value:

If all the goods are seized, and all the parties concerned as aforesaid are subsequently convicted in consequence of such seizure and by the exertion of the seizors, one-half of such value:

If the goods only are seized, one-eighth, or such other part as the commissioners of the Customs shall think proper, not exceeding one-fourth of such value.

In the case of seizures of other goods, not silks :—

If the vessel or other means of conveyance is or are seized and condemned, or if any person is prosecuted to conviction on account of the same, one-half of the produce, exclusive of the duties :

If the goods only, one fourth of such produce.

In the case of damaged tobacco, snuff, or other goods destroyed, such reward as the lords of the treasury or the commissioners of his Majesty's Customs may think proper to direct, not exceeding a moiety of the duty payable on such goods in case the same had been sold for home consumption.

In the case of seizures of silk goods, the whole value of such goods, exclusive of the duty thereon.

In the case of seizures of vessels and boats :—

If sold, a moiety of the produce :

If taken into the public service or broken up, a moiety of the value.

In the case of seizures of cattle and carriages :—

In all cases, three-fourths of the produce of the sale."

The treasury or commissioners to fix value of spirits and tobacco.

Sect. 68. "Provided that the value of spirits and tobacco seized as aforesaid shall in all cases be deemed and taken to be such as the lords of the treasury or the commissioners of his Majesty's Customs may think fit to fix the same at *per* gallon or *per* pound weight, for the purpose of rewarding the said officer as aforesaid ; and that all the beforementioned rewards shall be paid subject to a deduction of ten pounds *per centum* on account of law charges and other expenses."

Rewards to be subject to deduction.

All rewards and seizures payable to officers of army, navy, or marines to be regulated by his Majesty's orders in council.

Sect. 69. "That every such reward, or part or share of any such seizure or of the value thereof, as shall be payable to any officer or officers, non-commissioned officers, petty officers, seamen, or privates of his Majesty's army, navy, or marines, or acting under the orders of the lord high admiral or commissioners of the Admiralty, shall be divided and distributed in such proportions, and according to such rules, regulations, and orders, as his Majesty shall, by his order or orders in council, or by his royal proclamation in that behalf, be pleased to direct and appoint."

Commissioners may distribute officers' shares of seizures, so as to reward persons not actually present.

Sect. 70. "That it shall be lawful for the commissioners of his Majesty's Customs or Excise respectively, and they are hereby authorized, in case of any seizure of vessels, boats, or goods, or of the apprehension of any parties, under this or any other act relating to the Customs, to direct the distribution of the seizor's share of such vessels, boats, or goods, or of any penalties or rewards that may be recovered on account of any seizure, in such manner as to enable any officer or officers or other person or persons through whose information or means such seizure shall have been made, or penalty recovered, or party apprehended, and who may by them be deemed to be so entitled, to participate in such proportions as the said commissioners shall respectively deem expedient."

In case officers act negligently or collusively.

Sect. 71. "That upon proof being made to the satisfaction of the commissioners of his Majesty's Customs or Excise that any officer or officers or person or persons as aforesaid shall have acted collusively or negligently in the making of any seizure, it shall be lawful for the said commissioners to direct that the whole or any part of the proportion of such seizure be applied to the use of his Majesty."

Rewards.

3 & 4 Will. 4, c. 53.

No subject of his Majesty, except officers, to take up spirits in small casks sunk or floating upon the

Sect. 72. "That no person or persons whatsoever, being a subject or subjects of his Majesty, other than an officer or officers of the navy, Customs, or Excise, or some person or persons authorized in that behalf, shall intermeddle with or take up any spirits, being in casks of less content than forty gallons, which may be found floating upon or sunk in the sea within one hundred leagues of the United Kingdom; and that if any spirits shall be so intermeddled with or taken up, the same shall be forfeited, together with any vessel or boat in which they are found."

Rewards to persons giving information of goods floating or sunk in the sea.

Sect. 73. "That if any person or persons shall discover any spirits, being in casks of less content than forty gallons (*a*), which may be found floating upon or sunk in the sea, and shall give information to any officer of the Customs, or other person or persons duly authorized to make seizure of such spirits, so that seizure shall be made of the same, the person or persons giving such information shall be entitled to and shall receive such reward as the commissioners of his Majesty's Customs may deem it expedient to direct."

Allowance to poor persons confined for offences against laws of Customs and Excise.

Sect. 74. "That for the necessary subsistance of any poor person confined in the United Kingdom or in the Isle of Man, under or by virtue of any exchequer or other process for the recovery of any duties or penalties, either upon bond or otherwise, under this or any other act relating to the Customs or Excise, sued for under or by virtue of any order of the commissioners of his Majesty's Customs or Excise, it shall and may be lawful to and for the said commissioners respectively to cause an allowance, not exceeding the sum of seven-pence halfpenny and not less than four-pence halfpenny *per* day, to be made to any such poor person, out of any money in their hands arising from the duties of Customs or Excise, as the case may require."

JURISDICTION OF JUSTICES, &c.

Jurisdiction of justices, &c.

Penalties and forfeitures, how to be sued for, *and by information before justices of the peace.*

By the 3 & 4 Will. IV. c. 53, s. 75, "all penalties and forfeitures incurred or imposed by this or any other act relating to the Customs, or to trade or navigation, shall and may be sued for, prosecuted, and recovered by action of debt, bill, plaint, or information in any of his Majesty's courts of record at Westminster, or at Dublin, or at Edinburgh, or in the royal courts of the islands of Guernsey, Jersey, Alderney, Sark, or Man, in the name of his Majesty's attorney-general, or of the lord advocate of Scotland, or in the name or names of some officer or officers of his Majesty's Customs, *or by information before any two or more of his Majesty's justices of the peace* in the United Kingdom, or before any governor, deputy governor, or deemster (*b*) in the Isle of Man."

All vessels, boats, and goods seized under laws of Customs, deemed condemned, unless owner gives notice that he intends to claim.

Sect. 76. "That all vessels, boats, and goods, which shall have been or shall be hereafter seized as forfeited under any law relating to the Customs, and which shall have been or shall hereafter be ordered to be prosecuted by the commissioners of his Majesty's Customs, shall be deemed and be taken to be condemned, and may be sold in the manner directed by law in respect to vessels, boats, and goods seized and condemned for breach of any law relating to the Customs, unless the person from whom such vessels, boats, and goods shall have been seized, or the owner of them, or some person authorized by him, shall, within one calendar month from the day of seizing the same, give notice in writing, if in London, to the person seizing the same or to the secretary or solicitor for the Customs, and if elsewhere, to the person seizing the same or to the collector and comptroller or other chief officer of the Customs at the nearest port, that he claims the vessel, boat, or goods, or intends to claim them."

(*a*) *Sed vide* the 6 & 7 Will. IV. c. 60, ss. 4 and 11, *ante*, p. 537, n. (*c*).

(*b*) Or *two justices* thereof: see 1 & 2 Vict. c. 113, s. 9, *post*.

Jurisdiction of justices, &c.

3 & 4 Will. 4, c. 53.

Offences on high seas deemed to have been committed at place into which offender is brought, found, or carried (a).

Sect. 77. "That in case any offence shall be committed *upon the high seas* against this or any other act relating to the Customs, or any penalty or forfeiture shall be incurred upon the high seas for any breach of such act, such offence shall, for the purpose of prosecution, be deemed and taken to have been committed, and such penalties and forfeitures to have been incurred, at the place on land in the United Kingdom or the Isle of Man *into which the person committing such offence or incurring such penalty or forfeiture shall be taken, brought, or carried, or in which such person shall be found;* and in case such place on land is situated within any city, borough, liberty, division, franchise, or town corporate, *as well any justice of the peace for such city, borough, liberty, division, franchise, or town corporate, as any justice of the peace of the county within which such city, borough, liberty, division, franchise, or town corporate is situated, shall have jurisdiction* to hear and determine all cases of offences against such act so committed upon the high seas, any charter or act of Parliament to the contrary notwithstanding: provided always, that where any offence shall be committed in any place upon the water, not being within any county of the United Kingdom, or where any doubt exists as to the same being within any county, such offence shall, for the purposes of this act, be deemed and taken to be an offence committed upon the high seas."

One justice may summon offender, and the summons may be left at his last place of residence, or on board any ship to which he belongs.

Sect. 78. "That upon the exhibiting any information before any *justice of the peace* for any offence against this or any act relating to the Customs or to trade or navigation, for which offence the party charged is not liable to be detained in manner hereinbefore mentioned, such justice is hereby required to issue a summons for the appearance of the party against whom such information is exhibited before two justices of the peace; and such summons, directed to such party, being left either at his or her last known place of residence or on board any ship or vessel to which such party may belong, shall be deemed to have been sufficiently served."

Two justices may, upon appearance

Sect. 79. "That upon the appearance or default of any party so sum-

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(a) *Kite & Lane's case*, 1 *B. & C.* 101, and 2 *Dowl. & R.* 212, in which it appeared that A. and B. were found and arrested on board a boat laden with smuggled goods within the harbour of F., which was within a local exclusive jurisdiction, were afterwards taken, with the boat, &c., to the port of D., and convicted before two justices of the town and port of D., pursuant to stats. 45 Geo. III. c. 121, s. 7; 57 Geo. III. c. 87, s. 5; and 3 Geo. IV. c. 110; and it was held, that the conviction, which only stated that they had been found and taken on board a boat in the harbour of F., was bad, for not showing that the justices of D. had jurisdiction over the offence.

Semble, that in this case only the justices of the local jurisdiction of F. had authority to convict; and that the 45 Geo. III. c. 121, s. 7, gives jurisdiction to those justices only who reside near to the first port or place into which any ship, &c. shall be carried or where any person shall be arrested by virtue of that clause. See also *In re Peerless*, 1 *Queen's Bench Rep.* 143, in which *Kite & Lane's case* was recognized and acted on.

But see a decision on 6 Geo. IV. c. 105, *In re Nunn*, 8 *B. & C.* 644; S. C. nom. *Rex* v. *Nunn*, 3 *M. & R.* 75. A vessel liable to forfeiture under this act was seized in a part of the river Orwell, where the justices of Ipswich had jurisdiction; and a person found on board the vessel was taken to Harwich, and prosecuted before two justices of that place, who convicted him in a penalty of 100*l.* for having been found on the high seas on board a vessel liable to forfeiture. Held, that the justices of Harwich, being justices at the first place on land to which the party was carried, had jurisdiction to try the offence.

When the vessel was first boarded, she was just entering the harbour of Harwich. Held, that, in the absence of all other evidence, a person then found on board might properly be found to have been on board on the high seas. *In re Jas. Nunn*, 8 *B. & Cress.* 644, 3 *M. & Ryl.* 75.

Jurisdiction of justices, &c.

3 & 4 Will 4, c. 53.

or default of the party, proceed to the hearing.

moned, it shall be lawful for any two justices of the peace to proceed to the examination of the matter contained in such information, and upon due proof thereof, either upon the confession of such party or upon the oath of one or more credible witness or witnesses, to convict such party *in the penalty or penalties sued for by such information; and in case of non-payment thereof, such justices, or one of them, or some other justices or justice of the peace, are hereby authorized and required, by warrant under hand and seal, to commit such party to any of his Majesty's gaols within their or his jurisdiction, there to remain until the penalty or penalties shall be paid.*" (See, however, the 4 Will. IV. c. 13, *ante*, p. 549, altering certain penalties for imprisonment).

Warrants.

Sect. 30. "That such warrant shall and may be executed in any part of the United Kingdom."

The 4 Will. IV. c. 13, (see *ante*, p. 549), altering the penalties in the cases mentioned in sect. 2, has given fresh directions to justices in the third and following sections of that act, which may be well inserted here.

4 Will. 4, c. 13.

Justices of limited jurisdictions not having houses of correction to commit to some neighbouring house of correction.

By the 4 Will. IV. c. 13, s. 3, "that where any person shall have been convicted of any offence against this or any other act relating to the Customs, for which offence such person shall be liable to be committed to hard labour, and such conviction shall take place before any justices of the peace for any city, borough, liberty, division, franchise, or town corporate not having any house of correction situate within the same, it shall be lawful for such justices, and they are hereby required, by warrant under their hands and seals, to commit such offender to any house of correction near to the place where such offender is convicted, there to be kept to hard labour for such time as is hereinbefore provided for a first, second, and third offence respectively; and the governor or keeper of such house of correction is hereby required to receive such offenders, and to obey the said warrant in all respects."

Justices may order imprisonment in lieu of penalty; for first offence for six or nine months, and for a second offence six or twelve months, with hard labour.

Sect. 4. "That where any person shall have been convicted before any two justices of the peace of any offence not being one of those hereinbefore mentioned, and for which any penalty shall have been inflicted by the said act or any other act relating to the Customs, it shall and may be lawful for the said justices, if they shall think fit, to order and adjudge that such person shall, in default of paying the said penalty, be imprisoned for the first of such offences in any of his Majesty's gaols within their jurisdiction for a period of not less than six or more than nine calendar months, and if such party shall have been before convicted of any offence against this or any other act relating to the Customs, to be imprisoned in any house of correction, and there kept to hard labour, for any period not less than six or more than twelve calendar months."

Justices may commute sentence of hard labour for imprisonment where offender is a female, or is incapable of hard labour from age or sickness.

Sect. 5. "That where any person shall have been convicted of any offence against the said act or any act relating to the Customs, for which such person would be liable to be committed to hard labour, it shall and may be lawful for the justices before whom such person is so convicted, provided such person is a female, or provided it appears to such justices that such person is from age or sickness incapable of hard labour, to order and adjudge that such person shall, in lieu of being committed to hard labour, be imprisoned in any of his Majesty's gaols within their jurisdiction for the length of time to which such person would have been liable to be kept to hard labour: provided always, that in all such cases the cause of mitigation shall be stated in the warrant of commitment."

Where a person is liable to be committed to hard labour, and it appears that he has before been convicted of a similar offence, the justices

Sect. 6. "That where any person shall have been convicted before any two justices of the peace of any offence against this or any other act relating to the Customs, for which such person is liable to be committed to hard labour, and it shall, at any time during such imprisonment, be made appear to the said or any other two justices in the presence of such person that such person had been before convicted of any

such offence, it shall be lawful for such justices and they are hereby required to commit such offender to some house of correction, to be kept to hard labour, for any period not less than nine and not greater than twelve calendar months in the whole from the date of the first commitment, and to amend the warrant of commitment accordingly."

Jurisdiction of justices, &c.

3 & 4 Will. 4, c. 53.

may extend the period of imprisonment.

Sect. 7. "That it shall not be necessary in such amended warrant of commitment to state or refer to the former conviction."

As to the amended warrant.

Sect. 8. "And whereas by the said act power is given to justices of the peace to mitigate penalties in certain cases; be it further enacted, that such power shall be exercised by such justices only where the offender is convicted of a first offence against the said act or any other act relating to the Customs, and not where such offender is convicted of a second or other subsequent offence of that description."

Limitation of power to mitigate penalties.

Sect. 9. "That it shall and may be lawful for the commissioners of his Majesty's treasury, or any three or more of them, for the time being, or for the commissioners of his Majesty's Customs, by any order made for that purpose under their hands, to release from confinement any person or persons committed under this act, on such terms and conditions as to them respectively shall appear to be proper."

The treasury or commissioners of Customs may release persons committed under this act.

Sect. 10. "That all informations before justices of the peace for any offences committed against this act, and all convictions for such offences, and warrants of justices of the peace founded upon such convictions, shall be drawn respectively in the form or to the effect in the schedule to this act annexed."

As to the form of informations and convictions.

By the 6 & 7 Will. IV. c. 60, s. 9, reciting that by the above act persons convicted are to be imprisoned in any house of correction, &c., and that there are several places which have no house of correction, enacts, "that when any person shall have been duly convicted of any of the offences in the said act mentioned before any two justices of the peace within whose jurisdiction there is no house of correction, it shall and may be lawful for such justices, and they are hereby authorized and required, by warrant under their hands and seals, to commit such offenders to any of his Majesty's gaols within their jurisdiction wherein the sentence of hard labour is or can be executed, to the house of correction *nearest* to the place where such offender is convicted, for such time as is or * set forth in the said act for a first, second, and third offence respectively; and the governor or keeper of such house of correction is hereby required to receive such offender and to obey such warrant in all respects as if such house of correction was within the jurisdiction of the said justices."

6 & 7 Will. 4, c. 60.

Magistrates to commit offenders convicted of offences against Customs laws to nearest house of correction.

* *See* in act.

And by the 10th sect. of the same act it is enacted, "that wherever any person shall have been detained and taken before any justice of the peace for unshipping, or for aiding, assisting, or being concerned in the unshipping of any spirits or tobacco liable to forfeiture under any act relating to the Customs or Excise, or for carrying, conveying, or concealing, or for aiding, assisting, or being concerned in the carrying, conveying, or concealing of any such spirits or tobacco, and it shall appear to such justice that the quantity of spirits in respect of which such person has been so detained does not exceed one gallon, or that the quantity of tobacco in respect of which such person has been so detained does not exceed six pounds weight, it shall and may be lawful for such justice and he is hereby authorized to proceed summarily upon the case without any information, and although no direction shall have been given by the commissioners of his Majesty's Customs, and to convict such person of such offence, and to adjudge that such person shall, in lieu of any other penalty, forfeit any sum of money not exceeding five pounds, and in default of payment of such sum of money to commit such person to any of his Majesty's gaols for any time not exceeding one month."

Authorizing magistrates to proceed to conviction of smugglers in certain cases without an order from the Board of Customs.

By the 3 & 4 Will. IV. c. 53, s. 81. "That where any party shall or may be convicted before any two or more of his Majesty's justices of the

3 & 4 Will. 4, c. 53.

Justices empow-

Jurisdiction of justices, &c.

3 & 4 Will. 4, c. 53. ered to mitigate penalty in certain cases.

peace as aforesaid, in any penalty or penalties incurred as aforesaid, except as is hereinafter provided, it shall and may be lawful for the said justices, in cases where upon consideration of the circumstances they shall deem it expedient so to do, to mitigate the payment of the said penalty or penalties, so as the sum to be paid by such party be not less than one-fourth of the amount of the penalty in which such party shall have been convicted" (*a*).

As to persons committed for penalties under 100*l.*

Sect. 82. "That where any person shall have been so committed by any justices or justice of the peace to any prison for nonpayment of any penalty less than one hundred pounds, the gaoler or keeper of such prison is hereby authorized and required to discharge such person at the end of six calendar months from the commencement of such imprisonment" (*a*).

Married women may be committed to prison.

Sect. 83. "That where any party so convicted before two justices of the peace shall be a married woman, such party shall be liable to be committed to prison in manner hereinbefore mentioned, notwithstanding her coverture" (*b*).

Mode of proceeding before justices for condemnation of goods.

Sect. 84. "That when any information shall have been exhibited before any justice of the peace for the forfeiture of any goods whatsoever seized under this or any act relating to the Customs, it shall be lawful for the said justice, and he is hereby authorized and required, to summon the party to whom such goods belonged, or from whom they were seized, to appear before any two justices of the peace; and such summons, directed to such party, being left either at his or her last known place of residence or on board any ship to which such party may belong, shall be deemed to have been sufficiently served; and upon his, her, or their appearance or default, any two justices may proceed to the examination of the matter, and, upon due proof that the said goods are liable to forfeiture under this or any act relating to the Customs, may condemn the said goods" (*c*).

Sect. 85. Persons detained for offences herein mentioned to forfeit 100*l.*, or if seafaring men to be sent into the navy for five years (*d*).

Sect. 86. Justices may amend informations where offenders are charged as seafaring men, but are not fit for his Majesty's service. (Repealed by 4 Will. IV. c. 13, *ante*, 549.)

Sect. 87. If on examination persons convicted are found unfit, they may be again conveyed before magistrates, and convicted in the penalty of 100*l.*, and in default sent to gaol. (Repealed by 4 Will. IV. c. 13, *ante*, 549.)

As to jurisdiction in boroughs.

Sect. 88. "That where any offence against this or any other act relating to the customs shall be committed in any city, borough, liberty, division, franchise, or town corporate, as well any justices of the said city, borough, liberty, division, franchise, or town corporate, as any justices of any county in which such city, borough, liberty, division, franchise, or town corporate is situated, shall have jurisdiction to hear and determine upon the same."

A magistrate of adjoining county, with one of county where offence committed, may hear information

Sect. 89. "That where the attendance of two magistrates having jurisdiction in the county where the offence is committed cannot be conveniently obtained, it shall be lawful for a magistrate of any adjoining county, with one magistrate of the county in which the offence was committed, to hear and determine any information exhibited before them,

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(*a*) As many of the pecuniary penalties are abolished by the 4 Will. 4, c. 13, the above two sections are greatly modified. See sects. 4, 5, 6, & 8 of the 4 Will 4, c. 13 (*ante*, p. 558), as to justices' power of mitigating sentences; and sect. 9, as to power of Treasury or commissioners of Customs.

(*b*) See 4 Will. IV. c. 13, s. 5, as to power of justices in case of a female convicted, *ante*, p. 558.

(*c*) See this section repealed and other provisions substituted by the 4 Will. 4, c. 13, *ante*, pp. 549, 558.

(*d*) See this section repealed and other provisions substituted by 4 Will. IV. c. 13, s. 1, *ante*, p. 549.

and to have the same powers and authorities in all respects, as to any proceeding had under this or any other act relating to the customs, as if they were both magistrates for the county in which the offence was committed."

Proceedings against offenders, &c.

3 & 4 Will. 4, c. 53.

Sect. 90. "That no writ of certiorari shall issue from his Majesty's court of King's Bench to remove any proceedings before any justice or justices of the peace under any act for the prevention of smuggling or relating to the customs, nor shall any writ of habeas corpus issue to bring up the body of any person who shall have been convicted before any justice or justices of the peace under any such act, unless the party against whom such proceeding shall have been directed, or who shall have been so convicted, or his attorney or agent, shall state in an affidavit in writing, to be duly sworn, the grounds of objection to such proceedings or conviction, and that upon the return to such writ of certiorari or habeas corpus no objection shall be taken or considered other than such as shall have been stated in such affidavit; and that it shall be lawful for any justice or justices of the peace, and they are hereby required, to amend any information, conviction, or warrant of commitment for any offence under any such act at any time, whether before or after conviction."

Writs of certiorari and habeas corpus not to be issued except on affidavit, and justices may amend informations, &c. (*a*).

Sect. 91. "That all informations before justices of the peace for any offences committed against this or any other act relating to the Customs, and all convictions for such offences, and warrants of justices of the peace founded upon such convictions, shall be drawn respectively in the form or to the effect in the schedule to this act annexed."

Informations and convictions to be in the form or to the effect in the schedule.

Sect. 92 provides and enacts, "that every information for any penalty or forfeiture, and every conviction or warrant of commitment for any penalty, shall be deemed valid and sufficient in which the offence for which such penalty shall have been inflicted, or the cause of such forfeiture, is set forth in the words of this act." (But now, in the form given by the 4 Will. IV. c. 13, *post*, p. 570).

Informations, &c. to be deemed valid if the offence is set forth in the words of the act.

Sect. 93. "That all the powers vested in any justices or justice of the peace by virtue of this act shall be and the same are hereby vested in and may be exercised in the Isle of Man, by any governor, deputy governor, or *deemster* of the Isle of Man, so far as regards offences committed against or penalties or forfeitures incurred by this or any other act relating to the Customs."

Powers of justices to be exercised by governors or deemsters of the Isle of Man.

And by the 1 & 2 Vict. c. 113, s. 9, "All the powers vested in any governor, deputy governor, or deemster in the Isle of Man, by virtue of the above recited act, shall be vested in and may be exercised in the said Isle of Man by any two justices of the peace in and for the said island: provided always, that any one of such justices may do any act which one justice is authorized to do by the said act or any other act relating to the Customs."

Power of deemsters in Isle of Man, extended to justices thereof.

Sect. 94. "That all penalties and forfeitures which may be recovered before any justices of the peace under this or any other act relating to the Customs or Excise, on any prosecution by order of the commissioners of Customs, shall be paid to the commissioners of his Majesty's Customs, and on any prosecution by order of the commissioners of Excise shall be paid to the commissioners of his Majesty's Excise, or to the person appointed by them respectively to receive the same; and such penalties and forfeitures shall be applied by the said commissioners respectively in such manner as the law directs, any thing contained in an act passed in the third year of the reign of King George the Fourth, intituled, '*An Act for the more effectual Administration of the Office of a*

Penalties and forfeitures to be paid to commissioners of Customs or Excise, and applied as the law directs.

3 Geo. 4, c. 55.

(*a*) By 5 & 6 Vict. c. 47, s. 34, no writ of habeas corpus is to issue without notice to solicitor for Customs. By sect. 35 of the same act, no warrant of commitment shall be void if it state that the party has been convicted, and if the conviction has proceeded on good grounds.

Proceedings against offenders, &c.

3 & 4 Will. 4, c. 53.

Capias may issue against persons sued under this act, who are to give bail.

Justice of the Peace in and near the Metropolis, and for the more effectual Prevention of Depredations on the River Thames and its Vicinity for Seven Years, or any other act now in force or hereafter to be made, to the contrary in anywise notwithstanding."

Sect. 95. "That whenever any penalty shall be sued for as aforesaid by information against any person in any of his Majesty's courts of record at Westminster, or at Dublin, or at Edinburgh, a capias may thereupon issue as the first process, specifying the amount of the penalty sued for; and such person against whom such capias shall issue shall be obliged to give sufficient bail or security, by natural-born subjects or denizens, to the person or persons to whom such capias shall be directed, to appear in the court out of which such capias shall issue at the day of the return of such writ, to answer such suit and prosecution, and shall likewise at the time of such appearing give sufficient bail or security, by such persons as aforesaid, in the said court, to answer and pay all the forfeitures and penalties incurred for such offence or offences in case he, she, or they shall be convicted thereof, or to yield his, her, or their body or bodies to prison."

Persons in gaol not appearing or pleading to information, judgment may be entered by default.

Sect. 96. "That if any person against whom a capias shall issue out of any of his Majesty's courts of record as aforesaid shall be arrested upon such capias, and taken to prison for want of sufficient bail, a copy of the information exhibited against such person shall be served upon him or her in gaol, or delivered to the gaoler, keeper, or turnkey of the prison in which such person shall be confined; and if such person shall neglect or refuse to appear or plead to the said information for the space of twenty days, judgment shall be entered by default; and in case judgment shall be obtained against any such person or persons by default, verdict, or otherwise, and such person or persons shall not pay the sum recovered against him, her, or them for his, her, or their offence, execution shall be thereupon awarded and issued, not only against the body or bodies of the person or persons so in prison as aforesaid, but against all the real and personal estates of such person or persons, for such sum or sums of money so as aforesaid recovered against him, her, or them."

Persons not worth 5*l.* may defend suits *in formâ pauperis.*

Sect. 97. "That in case any person arrested and imprisoned by virtue of any writ of capias as aforesaid shall make affidavit before the judge or judges of the court where the information shall be brought, or before any other person commissioned to take affidavits in such court, that he or she is not worth, over and above his or her wearing apparel, the sum of five pounds, (which said affidavit the said judge or judges of such court, and such person so commissioned, is and are hereby authorized and required so to take), and such person shall thereupon petition such court to defend himself or herself against such information *in formâ pauperis*, that then the judge or judges of such court shall, according to their discretion, admit such person to defend himself or herself against such information in the same manner and with the same privileges as the judges of such court are by law directed and authorized to admit poor subjects to commence actions for the recovery of their rights; and for that end and purpose it shall be lawful for the judges of such courts to assign counsel learned in the law, and to appoint an attorney and clerk of such court, to advise and carry on any legal defence that such person can make against such action or information, and which said counsel, attorney, and clerk, so assigned and appointed, is and are hereby required to give his and their advice and assistance to such person, and to do their duties, without fee or reward."

Sheriff to grant special warrant on writ of capias being indorsed by solicitors of Customs.

Sect. 98. "That where any writ of capias or other process shall issue out of any court, directed to any sheriff, mayor, bailiff, or other person having the execution of process in any county, city, or liberty, against any person who shall be guilty of any offence whatsoever against this or any act relating to the Customs, every such sheriff, mayor, or bailiff, and other person having execution of process as aforesaid, and their and

Proceedings against offenders, &c.

3 & 4 Will. 4, c. 53.

every of their under-sheriffs, deputies, and other persons acting for them in the said office and offices respectively, shall and are hereby enjoined and required, upon the request or application of the solicitor for the Customs, (such request to be in writing, and indorsed upon the back of the said process, and signed by such solicitor with his name, and addition of solicitor for the Customs), to grant a special warrant or warrants, to such person or persons as shall be named to them by such solicitor, for the apprehending such offender or offenders; or in default thereof every such sheriff, mayor, bailiff, under sheriff, and other person acting in the said office or offices respectively shall be subject and liable to such process of contempt, fines, amerciaments, penalties, and forfeitures as they or any of them are now by any law, custom, or usage liable to in case of refusing or neglecting to execute the like process where the defendant might have been taken thereupon in the common and usual method of proceeding."

Sheriff indemnified from escapes in cases where warrants are granted at request of solicitor for Customs, and gaolers required to receive offenders.

Sect. 99. "That all and every such sheriff, mayor, bailiff, under sheriff, and other person so granting or making out such special warrant as aforesaid, shall be and they are hereby saved harmless and indemnified against his Majesty, his heirs and successors, and against all and every other person or persons whomsoever, of and from all escapes of any person or persons who shall or may be taken by virtue of any such warrant as aforesaid, which shall or may happen from the time of taking such offender or offenders till he, she, or they shall be committed to the proper gaol or prison, or offered and tendered to the gaol-keeper or other person having charge of such gaol or prison, (who is hereby enjoined and required to receive every such person or persons so apprehended as aforesaid, and give a receipt for his, her, or their body or bodies), and of and from all actions, prosecutions, process of contempt, and other proceedings for or by reason of such escape, any law, custom, or usage to the contrary notwithstanding."

No claim or appearance to be entered to any information for forfeiture of goods, unless in name of owner, and oath made to the property.

Sect. 100. "That no claim shall be permitted to be entered to, and no appearance shall be permitted to be entered to, any information filed for the forfeiture of any vessel, boat, or goods seized for any cause of forfeiture, and returned into any of his Majesty's courts of record in the United Kingdom, unless such claim or appearance is entered in the true and real name or names of the owner or owners, proprietor or proprietors of such vessel, boat, or goods, describing the place of residence and the business or profession of such person or persons; and if such person or persons shall reside at London, Edinburgh, or Dublin, or within the liberties thereof, oath shall be made by him, her, or them before one of the judges of the court into which the said vessel, boat, or goods are returned, or in which such information is filed, that the said vessel, boat or goods was or were really and truly the property of him, her, or them at the time of such seizure; but if such person or persons shall not be resident in London, Edinburgh, or Dublin, or the liberties thereof, then and in such case oath shall be made in like manner by the agent or attorney or solicitor by whom such claim or appearance shall be entered, that he has full power and legal authority and directions from such owners or proprietor to enter such claim or appearance, and that to the best of his knowledge and belief such vessel, boat, or goods were, at the time of the seizure thereof, *bonâ fidè* and truly the real property of the person or persons in whose name or names such claim or appearance is entered; and on failure thereof, the vessel, boat, or goods shall be absolutely condemned, and judgment shall be entered thereon by default, according to the usual method of proceedings of the court, in the same manner as if no claim or appearance had been entered thereto; and every person who shall be convicted of making or taking a false oath to any of the facts hereinbefore directed or required to be sworn shall be deemed guilty of perjury, and shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury."

Indemnity to officers, &c.

3 & 4 Will. 4, c. 53.

Owners to give security for costs.

Sect. 101. "That upon the entry of any claim to any boat or vessel, or to any goods, seized for any cause of forfeiture, or of any appearance to any information filed for such forfeiture, the person or persons who shall enter the claim or appearance as the owner or proprietor thereof (in case such claimant shall reside in the United Kingdom) shall be bound, with two other sufficient sureties, in the penalty of one hundred pounds, to answer and pay the costs occasioned by such claim or appearance; and if such owner or proprietor shall not reside in the United Kingdom, then and in such case the attorney or solicitor by whose direction such claim or appearance shall be entered shall in like manner be bound, with two other sufficient sureties, in the like penalty, to answer and pay the costs occasioned by such claim or appearance."

If suit brought on account of seizure, and judge certify *probable cause*, plaintiff to have twopence damages, and defendant fined not more than one shilling (a).

Sect. 102. "That in case any information or suit shall be commenced or brought to trial on account of the seizure of any vessel, boat, or goods, merchandizes, or commodities whatsoever, or any horses, or other animals, or any carriage, seized as forfeited by this or any act relating to the Customs, wherein a verdict shall be found for the claimant thereof, and it shall appear to the judge or court before whom the same shall have been tried that there was a probable cause of seizure, such judge or court shall certify in the record that there was such probable cause, and in such case the person who made such seizure shall not be liable to any action, indictment, or other suit or prosecution on account of such seizure; and in case any action, indictment, or other suit or prosecution shall be commenced and brought to trial against any person or persons whatsoever on account of any such seizure as aforesaid, wherein a verdict shall be given against the defendant or defendants, if the court or judge before whom such information or suit shall have been tried shall have certified in the said record that there was a probable cause for such seizure, then the plaintiff, besides the things seized, or the value thereof, shall not be entitled to above two-pence damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined above one shilling."

No process to be sued out against officer making seizure, until *one calendar month after notice given.*

Sect. 103. "That no writ shall be sued out against, nor a copy of any process served upon, any officer of the army, navy, marines, Customs, or Excise, or against any person acting under the direction of the commissioners of his Majesty's Customs, for any thing done in the execution of or by reason of his office, until one calendar month next after notice in writing shall have been delivered to him, or left at his usual place of abode, by the attorney or agent for the party who intends to sue out such writ or process as aforesaid, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring such action, and the name and place of abode of the attorney or agent; and that a fee of twenty shillings shall be paid for the preparing or serving of every such notice, and no more."

No evidence to be adduced but what is contained in notice.

Sect. 104. "Provided that no plaintiff in any case where an action shall be grounded on any such act done by the defendant shall be permitted to produce any evidence of the cause of such action, except such as shall be contained in the notice to be given as aforesaid, or shall receive any verdict against such officer or person, unless he shall prove on the trial of such action that such notice was given; and in default of such proof, the defendant in such action shall receive a verdict ~~and costs~~ as aforesaid."

Officer may tender amends.

Sect. 105. "That it shall and may be lawful to and for any such officer or other person to whom such notice shall have been given as aforesaid, at any time within one calendar month after such notice

(a) But a plaintiff may recover for any deterioration of his goods improperly and negligently kept, whilst under seizure. *Laugher* v. *Brefitt*, 5 B. & Ald. 762; 1 Dowl. and Ryl. 417, S. C.

shall have been given, to tender amends to the party complaining, or to his, her, or their agent or attorney, and in case the same is not accepted to plead such tender in bar to any action to be brought against him grounded on such writ or process, together with the plea of not guilty, and other pleas, with leave of the court; and if, upon issue joined thereon, the jury shall find the amends so tendered to have been sufficient, that then they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become nonsuited, or discontinue his, her, or their action, or in case judgment shall be given for such defendant upon demurrer, then such defendant shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only; but if, upon issue joined, the jury shall find that no amends were tendered, or that the same were not sufficient, or shall find against the defendant in such other plea or pleas, then they shall give a verdict for the plaintiff, and such damages as they shall think proper, together with his, her, or their costs of suit."

Indemnity to officers, &c.

3 & 4 Will. 4, c. 53.

Sect. 106. "That in case such officer or other person as aforesaid shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him, by leave of the court where such action shall be brought, at any time before the trial of the said action, to pay into court such sum of money as he shall see fit, whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such court as in other actions where the defendant is allowed to pay money into court."

Neglecting to tender amends may pay money into court.

Sect. 107. "That if any action or suit shall be brought or commenced as aforesaid, such action or suit shall be brought or commenced *within six months* next after the cause of action shall have arisen, and not afterwards, and shall be laid and tried in the county or place where the facts were committed, and not in any other county or place; and the defendant or defendants shall and may plead the general issue, and give the special matter in evidence, at any trial had thereupon; and if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her, or their action or suit, or if, upon a verdict or demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall or may receive treble costs, and have such remedy for the same as any defendant or defendants can or may have in other cases where costs are given by law." [See now as to treble costs the 5 & 6 Vict. c. 97, ss. 1 and 2.]

Six months after cause of action. Venue local. Plea, general issue.

Treble costs.

Sect. 108. "That whenever any person shall be charged with any offence against this or any act relating to the Customs, or for which he or she may be prosecuted by indictment or information in his Majesty's Court of King's Bench, and the same shall be made appear to any judge of the same court, by affidavit or by certificate of an information or indictment being filed against such person in the said court for such offence, it shall and may be lawful for such judge to issue his warrant under his hand and seal, and thereby to cause such person to be apprehended, and brought before him or some other judge of the same court, or before some one of his Majesty's justices of the peace, in order to his or her being bound to the King's Majesty, with two sufficient sureties, in such sum as in the said warrant shall be expressed, with condition to appear in the said court at the time mentioned in such warrant, and to answer to all and singular indictments or informations for any such offence; and in case any such person shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice respectively to commit such person to the common gaol of the county, city, or place where the offence shall have been committed, or where he or she shall have been apprehended, there to remain until he or she shall become bound as aforesaid, or shall be discharged by order of the court in term time, or of one of the judges of the said court in vacation; and the recognizance to be thereupon taken shall be returned and filed in the said court, and shall continue in force until such person

Judges of King's Bench may issue warrants for apprehending offenders.

Neglecting to give bail, may be committed to gaol.

Proceedings against offenders, &c.

3 & 4 Will. 4, c. 53.

Indictments, &c. may be served by gaoler, and if offender neglect to appear, &c. prosecutor may enter plea of not guilty.

shall have been acquitted of such offence, or in case of conviction shall have received judgment for the same, unless sooner ordered by the court to be discharged; and that where any person, either by virtue of such warrant of commitment as aforesaid, or by virtue of any writ of capias ad respondendum issued out of the said court, is now detained or shall hereafter be committed to and detained in any gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to such person, or to the gaoler, keeper, or turnkey of the gaol wherein such person is or shall be so detained, with a notice thereon indorsed, that unless such person shall, within eight days from the time of such delivery of a copy of the indictment or information as aforesaid, cause an appearance and also a plea or demurrer to be entered in the said court to such indictment or information, an appearance and the plea of not guilty will be entered thereto in the name of such person; and in case he or she shall thereupon, for the space of eight days after the delivery of a copy of such indictment or information as aforesaid, neglect to cause an appearance and also a plea or demurrer to be entered in the said court to such indictment or information, it shall be lawful for the prosecutor of such indictment or information, upon affidavit being made and filed in the court of the delivery of a copy of such indictment or information, with such notice indorsed thereon as aforesaid, to such person, or to such gaoler, keeper, turnkey, as the case may be, which affidavit may be made before any judge or commissioner of the said court authorized to take affidavits in the said court, to cause an appearance and the plea of not guilty to be entered in the said court to such indictment or information, for such person; and such proceedings shall be had thereupon as if the defendant in such indictment or information appeared and pleaded not guilty, according to the usual course of the said court; and that if upon trial of such indictment or information any defendant so committed and detained as aforesaid shall be acquitted of all the offences therein charged upon him or her, it shall be lawful for the judge before whom such trial shall be had, although he may not be one of the judges of the said Court of King's Bench, to order that such defendant shall be forthwith discharged out of custody as to his or her commitment as aforesaid, and such defendant shall be thereupon discharged accordingly."

If upon trial the party is acquitted, any judge may discharge him out of custody.

When recognizance is given, and party shall not plead, copy of information &c. may be delivered to attorney or agent.

Sect. 109. "That where any person shall be arrested by virtue of a warrant issued as aforesaid, and shall enter into a recognizance, and appear in the said court at the return of the said recognizance, but shall not afterwards plead to the information or indictment, it shall and may be lawful for the prosecutor of such information or indictment to cause a copy thereof to be delivered to such person, or to his or her attorney or agent, or to be left at his or her last place of abode, with a notice thereon indorsed, that unless such person shall, within eight days from the time of such delivery of a copy of the information or indictment as aforesaid, cause a plea to be entered in the said court to such information or indictment, that the prosecutor of such information or indictment will enter a plea of not guilty on his or her behalf; and that upon affidavit being made and filed in the court of the delivery of a copy of such information or indictment, with such notice indorsed thereon as aforesaid, to such person, or to his or her attorney or agent, or at his or her last place of abode, as the case may be, it shall be lawful for the prosecutor of such information or indictment to cause the plea of not guilty to be entered in the said court to such information or indictment for such person, and such proceedings shall be had thereupon as if the defendant in such information or indictment had pleaded according to the usual course of the said court."

If party does not appear, a plea of not guilty may be entered.

Certain articles herein mentioned not to be landed coastwise

Sect. 110. "And for the purpose of enabling the mayor and commonalty and citizens of the city of London, and their successors, to ascertain and collect the amount of the dues payable to them upon the several

Proceedings against offenders, &c.

3 & 4 Will. 4, c. 53.

articles hereinafter mentioned, imported coastwise into the port of London; be it enacted, that if all or any of the goods of the description hereinafter mentioned, (that is to say), firkins of butter, tons of cheese, fish, eggs, salt, fruit, roots eatable, and onions, brought coastwise into the port of the said city, and which are liable to the said dues, shall be landed or unshipped at or in the said port before a proper certificate of the payment of the said duties shall have been obtained, such goods shall be forfeited, and may be seized by any officer of his Majesty's Customs empowered to seize any goods landed without due entry thereof; and such forfeiture may be sued for, prosecuted, and recovered by action of debt, bill, plaint, or information in any of his Majesty's courts of record at Westminster, in the name of the chamberlain of the said city, on behalf of the said mayor and commonalty and citizens."

until the dues of the city of London are paid.

When offenders are arrested and give bail to sheriff, the bail bond to be assigned to his Majesty.

Sect. 111. "That if any person shall be arrested by a writ of capias ad respondendum issuing out of any of his Majesty's courts of record, or out of any of the superior courts of record of either of the counties palatine, at the suit of the King's Majesty, his heirs and successors, and the sheriff or other officer shall take bail from such person, the sheriff or other officer, at the request and costs of the prosecutor, shall assign to the King's Majesty, his heirs and successors, the bail bond taken from such person, by indorsing the same, and attesting it under his hand and seal, in the presence of two or more credible witnesses, which may be done without any stamp, provided the assignment so indorsed be duly stamped before any suit be commenced thereupon; and if such bail bond be forfeited, such process shall thereupon issue as on bonds originally made to the King's Majesty, his heirs and successors; and the court in which such bail bond is put in suit may, by rule or rules of the same court, give such relief to the defendant or defendants as is agreeable to justice and reason."

Indictments to be preferred by order of commissioners, and suits to be in name of attorney general.

Sect. 112. "That no indictment shall be preferred or suit commenced for the recovery of any penalty or forfeiture under this or any other act relating to the Customs or Excise (except in the cases of persons detained and carried before one or more justices in pursuance of this act), unless such suit shall be commenced in the name of his Majesty's attorney general, or in the name of the lord advocate of Scotland, or unless such indictment shall be preferred under the direction of the commissioners of his Majesty's Customs or Excise, or unless such suit shall be commenced in the name of some officer of Customs or Excise, under the direction of the said commissioners respectively."

Attorney general or lord advocate may sign *noli prosequi*.

Sect. 113. "That if any prosecution whatever shall be commenced for the recovery of any fine, penalty, or forfeiture incurred under this or any other act relating to the customs or Excise, it shall be lawful for his Majesty's attorney general, or for the lord advocate of Scotland, if he is satisfied that such fine, penalty, or forfeiture was incurred without any intention of fraud, or that it is inexpedient to proceed in the said prosecution, to stop all further proceedings by entering a noli prosequi, or otherwise, on such information, as well with respect to the share of such fine, penalty, or forfeiture to which any officer or officers may be entitled, as to the King's share thereof."

Proof of payment of duties, or law ful importation of goods, to be on

Sect. 114. "That if any goods shall be seized for nonpayment of duties, or any other cause of forfeiture, and any dispute shall arise whether the Customs, Excise, or inland duties have been paid for the same, or the same have been lawfully imported, or concerning the place from whence such goods were brought, then and in such case the proof thereof shall be on the owner or claimer of such goods, and not on the officer who shall seize and stop the same."

No justice connected with collection of revenue to interfere in summary convictions

Sect. 115. "That no justice of the peace who is a collector or comptroller, or otherwise connected with the collection of the Customs or Excise, shall take cognizance of any matter relating to the summary convictions of persons offending against this or any other act relating to the Customs."

Proceedings against offenders, &c.

3 & 4 Will. 4, c. 53.

Averment of certain matters to be sufficient, unless contrary proved.

Sect. 116. "That in case of any information or proceedings had under this or any other act relating to the Customs, the averment that the commissioners of his Majesty's Customs or Excise have directed or elected such information or proceedings to be instituted, or that any vessel is foreign, or belonging wholly or in part to his Majesty's subjects, or that any person detained or found on board any vessel or boat liable to seizure is or is not a subject of his Majesty, or that any person detained is or is not a seafaring man, or fit and able to serve his Majesty in his naval service, or that any person is an officer of the Customs, and where the offence is committed in any port in the United Kingdom, the naming of such port in any information or proceeding, shall be sufficient, without proof as to such fact or facts, unless the defendant in such case shall prove to the contrary."

Persons employed for prevention of Smuggling to be deemed duly employed.

Sect. 117. "That all persons employed for the prevention of Smuggling under the direction of the commissioners of his Majesty's Customs, or of any officer or officers in the service of the Customs, shall be deemed and taken to be duly employed for the prevention of smuggling; and the averment, in any information or suit, that such party was so duly employed shall be sufficient proof thereof, unless the defendant in such information or suit shall prove to the contrary."

Viva voce evidence may be given that a party is an officer, as he is to be deemed a competent witness, although entitled to the whole or a share of the seizure, or penalty or reward on conviction.

Sect. 118. "That if upon any trial a question shall arise whether any person is an officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or an officer of Customs or Excise, evidence of his having acted as such shall be deemed sufficient, and such person shall not be required to produce his commission or deputation, unless sufficient proof shall be given to the contrary; and every such officer, and any person acting in his aid or assistance, shall be deemed a competent witness upon the trial of any suit or information on account of any seizure or penalty as aforesaid, notwithstanding such officer or other person may be entitled to the whole or any part of such seizure or penalty, or to any reward upon the conviction of the party charged in such suit or information."

What shall be deemed sufficient evidence of order of commissioners of Customs or Excise.

Sect. 119. "That upon the trial of any issue, or upon any judicial hearing or investigation touching any penalty or forfeiture under any law or laws relating to the Customs or Excise, or to the law of navigation, where it may be necessary to give proof of any order issued by the commissioners of his Majesty's treasury, or by the commissioners of his Majesty's Customs or Excise respectively, the letter or instructions which shall have been officially received by the officer of Customs or Excise at the place or district where such penalty or forfeiture shall have been incurred, or shall be alleged to have been incurred, for his government, and in which such order is mentioned or referred to, and under which said instructions he shall have acted as such officer, shall be admitted and taken as sufficient evidence and proof of such order to all intents and purposes whatsoever."

Limitation of times of suing, &c. *three years*, or before justices *six months*

Sect. 120. "That all suits, indictments, or informations exhibited for any offence against this or any other act relating to the Customs in any of his Majesty's courts of record at Westminster, or in Dublin, or in Edinburgh, or in the royal courts of Guernsey, Jersey, Alderney, Sark, or Man, shall and may be had, brought, sued, or exhibited within *three years* next after the date of the offence committed, and shall and may be exhibited before any *one or more justices of the peace within six months* next after the date of the offence committed."

Information any time *after six months*, in case of escape.

Sect. 121. "Provided that where any person shall have been detained for any offence against this or any other act relating to the Customs, and shall have made his escape from custody, an information may be exhibited before one or more justices of the peace against such person, for such offence, at any time afterwards, although more than six months shall have expired."

Indictments, &c. may be tried in

Sect. 122. "That any indictment or information for any offence against this or any other act relating to the Customs shall and may be

inquired of, examined, tried, and determined in any county of England where the offence is committed in England, and in any county in Scotland where the offence is committed in Scotland, and in any county in Ireland where the offence is committed in Ireland, in such manner and form as if the offence had been committed in the said county where the said indictment or information shall be tried."

Proceedings against offenders, &c.

3 & 4 Will. 4, c. 53.

any county in England, Scotland, or Ireland.

SCHEDULES TO THE 3 & 4 WILL. IV. c. 53.

County of ——— to wit. } *Be it remembered, that on the day of in the year of our Lord A. B., officer of Customs, who is directed by the commissioners of his Majesty's Customs to prefer this information, gives us esquires, two of his Majesty's justices of the peace in and for to understand and be informed, that C. D., being a subject of his Majesty, on the day of in the year of our Lord* [here state the offence], *contrary to the form of the statute in that case made and provided, whereby the said C. D. hath forfeited the sum of pounds.*

1. Form of information *before justices* of peace, where party charged is a subject of his Majesty, and a pecuniary penalty is inflicted.

County of ——— to wit. } *Be it remembered, that on the day of in the year of our Lord an information was exhibited by A. B., officer of Customs, before us esquires, two of his Majesty's justices of the peace in and for against C. D.; which said information charged, that the said C. D. on the day of in the year of our Lord* [here state the offence as in the information], *contrary to the form of the statute; which offence has been duly proved before us the said justices; we do therefore convict the said C. D. of the said offence, and do adjudge, that the said C. D. hath forfeited for his said offence the sum of pounds. Given under our hands and seals the day of* [In cases where the magistrates exercise the power of mitigation, add these words] *" which said sum of we the said justices do hereby mitigate to the sum of "*

2. Form of a conviction to be used for an offence against this act in cases where pecuniary penalty is inflicted upon the offender being a subject of his Majesty.

County of ——— to wit. } *To A. P., officer of Customs, and to E. F., the gaoler or keeper of the at in the*

Whereas C. D. has been duly convicted before us esquires, two of his Majesty's justices of the peace in and for of having [state the offence as in the information]: *and whereas we the said justices did adjudge, that the said C. D. had forfeited for his said offence the sum of pounds (which sum of pounds we the said justices did mitigate to the sum of), which said sum of pounds has not been paid: these are therefore to require you, the said A. B., forthwith to take, carry, and convey the said C. D. to the at in the and to deliver him into the custody of the gaoler or keeper of the said ; and we the said justices do hereby authorize and require you the said E. F., the gaoler or keeper of the said , to receive and take the said C. D. into your custody, and him safely to keep until he shall duly pay the said sum of Given under our hands and seals at in the of this day of in the year of our Lord one thousand eight hundred and*

3 Form of warrant of commitment.

County of ——— to wit. } *To A. B.*

Whereas C. D. has been duly convicted before us , esquires, two of his Majesty's justices of the peace, of the offence of having [here state the offence as in the information]; *and whereas the said C. D. has forfeited, for his said offence, the sum of pounds, which said sum of pounds has not been paid: these are therefore to command you the said A. B. to levy the said sum of by distress and sale of the goods and chattels of the said C. D. And we the said justices do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of within days after such distraint, unless the said sum of for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid. And you the said A. B. are hereby commanded to certify to us, the said justices, on the day of next ensuing, what you shall do by virtue of this warrant. Given under our hands and seals at in the this day of in the year of our Lord*

4. Warrant of distress.

Schedules.

4 Will. 4, c. 13.

SCHEDULE TO THE 4 Will. IV. C. 13.

(2). Form of information.

County of ——— to wit. } *Be it remembered, that on the day of in the year of our Lord one thousand eight hundred and A. B., officer of Customs, gives us and two of his Majesty's justices of the peace in and for to understand and be informed, that C. D., on the day of in the year of our Lord one thousand eight hundred and* [here state the offence as in the act of parliament], *contrary to the form of the statute in that case made and provided.*

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(2). Form of conviction.

County of ——— to wit. } *Be it remembered, that on the day of in the year of our Lord one thousand eight hundred and , an information was exhibited by A. B., officer of Customs, before us and two of his Majesty's justices of the peace in and for against C. D., which said information charged that the said C. D., on the day of in the year of our Lord one thousand eight hundred and* [here state the offence as in the information,] *contrary to the form of the statute; which offence* ["*has been duly proved before us the said justices,*" or "*the party has confessed himself to be guilty of,*" as the case may be]: *We do therefore convict the said C. D. of the said offence, and do adjudge that the said C. D.* [here insert the adjudication of the justices.]

Given under our hands and seals the day of .

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(3). Form of warrant of commitment.

County of ——— to wit. } *To A. B., officer of Customs, and to E. F., the gaoler or keeper of the at in the .*

Whereas C. D. has been duly convicted before us and two of his Majesty's justices of the peace in and for of having [state the offence as in the information]: *and whereas we the said justices did adjudge that the said C. D. should for his said offence These are therefore to require you the said A. L. forthwith to take, carry, and convey the said C. D. to the at in the and deliver him into the custody of the gaoler or keeper of the said : and we the said justices do hereby authorize and require you the said E. F., the gaoler or keeper of the said , to receive and take the said C. D. into your custody, and to* [insert the punishment according to the conviction.]

Given under our hands and seals at the day

Navigation of ships.

An Act for the Encouragement of British Shipping and Navigation, 3 & 4 Will. IV. c. 54.

The enactments in this important act are stated in this work under *title* "*Ships.*"

Registering Acts.

An Act for the Registering of British Vessels, 3 & 4 Will. IV. c. 55.—See also 5 & 6 Will. 4, c. 56, an act to regulate the admeasurement of the merchant shipping, and the 30th section of the 5 & 6 Vict. c. 47, which extends the provisions of the last-mentioned act to British possessions abroad. See "*Ships.*"

IV. Duties of Customs.

Duties of Customs.

The *Duties of Customs*, which we are now about to consider, or in other words, the varying amount of charge to be paid on each article to government, have already been defined and distinguished from the duties of *Excise*, in the introductory part of the 1st section (*ante*, p. 487). They were formerly known under the denomination of duties of Customs, *inwards*, *outwards*, and *coastwise*.

Importation duties.

The *importation* duties continue to be under the existing law more numerous than those levied on *exportation*, and in order to restrain the introduction of goods of *foreign manufacture* and to encourage *our own*,

they are frequently larger in amount in respect of manufactured goods than on such as are imported in a raw state; thus for instance, the duties on ostrich feathers, when dressed, are 1*l.* 10*s.* the lb.; but if undressed, one penny. (See 5 & 6 Vict. c. 47, Schedule, Class XIX. "Miscellaneous Articles," *post.*) The duties imposed on *goods* are not in general demandable upon *wearing apparel* accompanying the proprietor, and *bonâ fide* part of his baggage, and worn and used, provided such articles do not exceed what may be reasonably allowed according to the rank of the party in whose baggage the same may be found (*a*). So *British-built* carriages, actually in use by travellers, as then travelling, were allowed to pass inwards and outwards without payment of duties, and without entries under the restrictions respecting *baggage* (*b*): and there was an exception in favour of *chintzes*, calicoes, &c. from the *East Indies*, actually used and worn (*c*). And by the 5 & 6 Vict. c. 47, s. 17, no abatement of the duties payable upon the goods enumerated therein, found *derelict*, *jetsam*, *flotsam*, or *wreck*, shall be made or allowed. But *foreign watches* and *fowling-pieces*, whether new or used, must have been regularly entered and charged, though part of the baggage of a passenger (*d*).

Exportation duties.

The duties on *exportation* are fewer than those on *importation* of manufactured goods, and on principle should be regulated by the demands of the foreign consumers; because, if the duty upon a particular article be too high, they would be induced to dispense with it, or trade with other places for a supply. The necessity for obtaining purchasers of our produce and manufactures became so apparent in the last century that all the duties on the exportation of British goods and manufactures were repealed by 8 Geo. I. c. 15, s. 7, with a very few exceptions. But since that time many alterations have been made; and by the 5 & 6 Vict. c. 47, Table B. (*post*), which statute revised and consolidated the former enactments into one act, the present duties upon goods, wares, and merchandizes exported from the United Kingdom will be found enumerated.

What to be deemed an importation and exportation, and what an arrival or departure of a ship.

The 6 Geo. IV. c. 107, s. 122, defined what should be deemed an importation and exportation; and also what should be deemed the arrival and departure of a ship. The enactment is, "That if upon the first levying or repealing of any duty, or upon the first granting or repealing of any drawback or bounty, or upon the first permitting or prohibiting of any importion or exportation, whether inwards, outwards, or coastwise, in the United Kingdom, or in the Isle of Man, it should be necessary to determine the precise *time* at which an importation or exportation of any goods made and completed shall be deemed to have had effect, such time, in respect of importation, shall be deemed to be the time at which the ship importing such goods had actually come within the limits of the

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(*a*) See the curious old case of *Chapman* v. *Lamb*, 2 *Strange's Reports*, 943, which was in trover for 14 shirts, a nightgown and cap; on a case being submitted for the opinion of the judges, the facts being, that the plaintiff arrived at Dover from France, and brought the goods with him as his own wearing apparel, and *not as merchandize*, or for sale; and the defendant seized them for non-payment of duty. For the plaintiff it was contended, that by 13 & 14 Car. 2, c. 11, s. 14, no goods were liable, but such as were imported as merchandize; whilst for the defendant it was insisted per contra, that the plaintiff by that one importation was a merchant within the 12 Car. 2, c. 4, and that the only test whether goods are imported as merchandize is, whether they are such as might be exposed to sale. The plaintiff, however, had judgment, the goods not having been imported as merchandize. See also Bac. Ab. "Smuggling," (D. 2) and (F. 7); Letters from the Treasury, 7 June, 1814, 2 Jan. 1817; 1 Chitty's Commercial Law, 711.

(*b*) Letter from the Treasury, 26th Sept. 1817; Pope, 138; 1 Chitty, Com. Law, p. 712.

(*c*) Order of Customs, 14 Nov. 1817; Pope, tit. 91, and *id.* 138; 1 Chitty, Com. Law, 712.

(*d*) Order of Customs, 3 Dec. 1816; Pope, 138.

Duties of Customs.

port at which such ship shall in due course be reported, and such goods be discharged; and that such time, in respect of exportation, shall be deemed to be the time at which the goods had been shipped on board the ship in which they had been exported; and that if such question shall arise upon the arrival or departure of any ship, in respect of any charge or allowance upon such ship, exclusive of any cargo, the time of such arrival shall be deemed to be the time at which the report of such ship shall have been or ought to have been made; and the time of such departure shall be deemed to be the time of the last clearance of such ship with the collector and controller for the voyage upon which she had departed."

Decisions on repealed acts which may be still applicable.

Many decisions have taken place under the repealed acts upon the legal meaning of the terms *importation* and *exportation*, and which may still be applicable (*a*).

A vessel is generally considered to have *imported* her cargo when she has come within the limits of the port *in order* to lay the goods on land (*b*); as when a ship brought a cargo of bay salt to a haven in England, and sold part of her cargo to another vessel, to which the goods were delivered, and afterwards exported; it was held that an importation had taken place, as well as an exportation, and that duties were payable accordingly on the cargo sold; and it was determined that the discharge of the goods from the vessel in which they were imported, on the sale taking place, was equivalent to putting them on the land, as the delivery was made within the body of the country (*c*). A legatee under a bequest of wines which arrived in the port of London in a ship before the death of testator—the report of the arrival of the ship being made before, but the entry of the wines not being made until after the death of testator—is not subject to the payment of the duties, the executor being bound to pay them out of the assets (*d*).

The term *exportation* has also received judicial construction. Thus, when a drawback is payable on exportation, the master is not entitled to it without producing the clearing note, which is the last document that he receives; and on an exportation from London it is not given to the master till after he has delivered all necessary papers at Gravesend, so that an exportation from London is not complete until the ship has cleared at Gravesend (*e*). So, unless a vessel has proceeded out of the limits of the port with her cargo, it is not such an exportation of the goods as will protect the cargo from duties subsequently imposed on the exportation of goods of the same nature, although she is not only freighted and afloat, but has gone through all the formalities of clearing, &c., at the Custom House, and has paid the exportation duties. And all such new imposts as are laid on such goods attach while the vessel is waterbound within any part of the port (*f*).

Contingencies, &c. not provided against.

It was said, in a case under the Excise laws, that it is a principle of legislation in the revenue acts not to provide for contingencies, or provide for losses, but to impose the duty and leave the party to petition (*g*). There are, however, provisions giving power to *abate* duties upon goods damaged during a sea voyage (*h*).

Sugar.

The duties on *sugar* are continued annually (*i*). By the 5 Vict. sess. 2,

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(*a*) See the decisions arranged, 1 *Chit. Com. L.* 245, 569, 703, 704.

(*b*) 2 *Chalmer's Op.* 280; *Leake* v. *Smith, Bunb.* 79; *Com. Dig. Trade,* (C. 1, 12, O. 18;) 2 *Price,* 385; *Score* v. *Ld. Admiral Parker,* 273; *Edwards, Ad. Rep.* 135.

(*c*) Id. *ibid.* 1 *Chitty's Com. L.* 569.

(*d*) *Servant* v. *Denton,* 2 *Chitty's Rep.* 456.

(*e*) *Williams* v. *Marshall,* 6 *Taunt. Rep.* 320; 2 *Marsh.* 92, *S. C.*

(*f*) *The Attorney-General* v. *Pougett,* 2 *Price Rep.* 38.

(*g*) *Post,* 6 Geo. IV. c. 107, s. 130; 2 *Anstr.* 558; 7 *T. R.* 56; 1 *Anstr.* 276.

(*h*) See 5 & 6 Vict. c. 47, ss. 14, 18, and 19; and s. 17.

(*i*) See *History &c. of this duty,* 1 *Chitty's Com. Law,* 705.

c. 34, intituled "An Act for granting to her Majesty, until the 5th Day of July, 1843, certain Duties on Sugar imported into the United Kingdom, for the Service of the Year 1842," (18th June, 1842), it is enacted, "That the duties imposed on sugar and molasses by an act of his late Majesty King William the Fourth, intituled 'An Act for granting to his Majesty, until the 5th Day of July, 1837, certain Duties on Sugar imported into the United Kingdom, for the Service of the Year 1836,' and by an Act passed in the third and fourth years of the reign of her present Majesty, intituled 'An Act for granting to her Majesty Duties of Customs, Excise, and Assessed Taxes,' shall be further continued until the 5th day of July, 1843" (*a*).

Duties of Customs.

Duties imposed by 6 & 7 Will 4, c. 26, and 3 & 4 Vict. c. 17, continued till 5th July, 1843.

And by sect. 2 these duties are to be collected, paid, and accounted for in such and the like manner as if the said duties had been continued to the 5th of July, 1843, by the said first-recited act.

By the 5 & 6 Vict. c. 47, s. 14, no abatement of the duties of importation in respect of sugar shall be made on account of damage sustained during the voyage. And by sect. 17 of the same act no abatement on the duties on sugar found *derelict*, *jetsam*, *flotsam*, or *wreck*, shall be made or allowed.

Wine imported by a foreign ambassador, for his own use, was generally duty free by license from the treasury; but if, on retiring from this country, he leave it in the hands of an agent to be sold, and the same were sold, it was held that the wines having passed from the hands of the privileged person became liable to the duties (*b*). For the present duties on wines, see Table (A.) of the 5 & 6 Vict. c. 47, *post*, p. 576.

Wine.

The 5 & 6 Vict. c. 47, intituled "An Act to amend the Laws relating to the Customs," [9th July, 1842], recites that "Whereas several acts were passed in the third and fourth years of the reign of his late Majesty King William the Fourth, for consolidating the laws of the Customs: And whereas it has been found necessary from time to time to make certain alterations therein: And whereas certain further alterations and amendments are now required: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act the same shall come into and be and continue in full force and operation for the purposes mentioned therein, except where any other commencement is hereinafter particularly directed."

Present Duties of Customs.

5 & 6 Vict. c. 47.

Commencement of Act.

The sections of this statute, from s. 2 to s. 38, being those relating to the "Management," "Regulation," and "Smuggling," will be found mentioned under these respective heads in the three previous divisions of this subject. That portion of the New Tariff Act applying to the *duties of Customs* which is now under consideration, commences at s. 40, and is as follows:

Sect. 40 recites, that "Whereas by one other of the said acts, intituled 'An Act for granting Duties of Customs' (*c*), the several duties of Customs were consolidated into one act: and whereas since the passing of the said act divers acts altering the said duties have from time to time been passed, and it will be to the advantage of the trade and commerce of the country that the said several duties should be revised, and consolidated into one act; be it therefore enacted, that in lieu and instead of all other duties of Customs, except the duties on corn, grain,

(*a*) A reference to the 6 & 7 Will. IV. c. 26, will be sufficient for the purposes of this work, without inserting the table of duties here.

(*b*) *Attorney-General* v. *Thornton*, *M'Clel. Rep.* 600.

(*c*) 3 & 4 Will. 4, c. 56.

Present duties of Customs.

5 & 6 Vict. c. 47.

meal, or flour, sugar, and molasses, there shall be raised, levied, collected, and paid unto her Majesty, her heirs and successors, upon goods, wares, and merchandizes imported into or exported from the United Kingdom, the several duties of Customs, and there shall be allowed the several drawbacks of the same, which are respectively inserted, described, and set forth in the tables marked (A.) and (B.) to this act annexed, or otherwise in this act, together with the additional duties hereinafter mentioned."

Duties to be paid on and until the day from which they are to be raised and levied.

Sect. 41, Provides and enacts, "that where by this act, or the said table (A.) annexed thereto, any duty upon any article is directed to be raised, levied, collected, and paid from any future day, the duty imposed upon such article by the said act for granting duties of Customs, or by any act for altering or amending the same, shall be raised, levied, collected, and paid in respect of such article on and until that day."

Additional duty of fourpence per gallon to be levied upon spirits, and of five per cent. upon all other articles.

Sect. 42. "That there shall be charged, raised, levied, collected, and paid unto her Majesty, her heirs and successors, in addition to the duties mentioned in the said table marked (A.), upon every gallon of spirits or strong waters, of all sorts, imported into the United Kingdom, a further duty of four-pence, and upon all the articles enumerated in the said table marked (A.), except spirits and strong waters, a further duty of five per centum upon the amount of the several duties in and by the said table marked (A.) respectively charged upon the said articles and each of them."

Duties how to be recovered.

Sect. 43. "That the duties and drawbacks by this act imposed and allowed shall be under the management of the commissioners of her Majesty's Customs, and shall be ascertained, raised, levied, collected, paid, recovered, allowed, and applied or appropriated under the provisions of the said act for granting duties of Customs, and of any other act or acts in force relating to the Customs."

Goods in warehouse to be liable to the new duties.

Sect. 44, Enacts and declares, "That all goods whatsoever which shall have been warehoused without payment of duty upon the first importation thereof, and which shall have been or shall be in the warehouse at the commencement of the duties imposed by this or any other act or acts relating to the Customs, shall be deemed and taken to be liable to such duties."

Manufactures of the Channel Islands to be deemed of foreign manufacture.

Sect. 45. "That all manufactures of the islands of Guernsey, Jersey, Alderney, Sark, or Man, made of materials of foreign origin or produce, or of materials liable to duty upon importation into the United Kingdom, and upon which no such duty has been paid, or upon which drawback of such duty has been allowed in the United Kingdom, except manufactures of linen and cotton made in and imported from the Isle of Man, shall, for the purposes of duty, be deemed and taken to be the produce of and imported from a foreign country."

Repayment of duty on barilla used in the bleaching of linen, repealed.

Sect. 46—Reciting that "whereas by an act passed in the fourth and fifth years of the reign of his late Majesty king William the Fourth, intituled 'An Act to amend the Laws relating to the Customs, it is enacted, that for any barilla used in the process of bleaching of linen a repayment of the duties which have been paid on the importation of such barilla shall be made to the person so using the same, and it is expedient to discontinue such repayment'"—enacts, "That no such repayment shall be allowed upon any such barilla the duty whereon shall have been paid after the passing of this act."

Re-establishing drawback on cleaned rice.

Sect. 47—Reciting that "whereas by the said act for granting duties of Customs it is enacted, that upon the exportation from the United Kingdom of any foreign rice or paddy which shall have paid the duties under that act there should be allowed and paid for every hundred weight thereof a drawback equal in amount to the duty paid upon every four bushels of the rough rice or paddy from which the same shall have been cleaned, which drawback will only continue payable in respect of rice and paddy upon which the duties have been paid under the said last-mentioned act: and whereas it is expedient that a lik-

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class I. Animals (living) and Articles of Food—(*Continued*).						
Fruit—(continued.)						
Citron, preserved with Salt, for every 100*l.* value	10	0	0	10	0	0
Cranberries, the gallon	0	0	1	0	0	1
Currants . the cwt.	1	2	2	1	2	2
Dates . the cwt.	0	10	0	0	10	0
Figs . the cwt.	0	15	0	0	15	0
Grapes, for every 100*l.* value	5	0	0	5	0	0
Medlars . the bushel	0	1	0	0	0	6
Nuts, viz.						
—— Chesnuts, the bus.	0	2	0	0	2	0
—— Cocoa Nuts, the 1200	.		.	0	1	0
—— Pistachio Nuts, the cwt.	0	10	0	0	10	0
—— Small Nuts, the bushel	0	2	0	0	2	0
—— Walnuts, the bushel	0	2	0	0	2	0
—— Nuts, not otherwise enumerated, except such as are commonly used for expressing Oil therefrom, for every 100*l.* value	20	0	0	20	0	0
Olives . the gallon	0	2	0	0	2	0
Oranges and Lemons, viz.—						
In Chests and Boxes not exceeding 5000 Cubic Inches, the box	0	2	6	0	2	6
Over 5000 Cubic Inches, and not exceeding 7300, the box	0	3	9	0	3	9
Over 7300 Cubic Inches, and not exceeding 14,000, the box	0	7	6	0	7	6
For every 1000 Cubic Inches exceeding 14,000	0	0	7½	0	0	7½
Loose . the 1000	0	15	0	0	15	0
Entered at Value, at the Option of the Importer, for every 100*l.* value . .	75	0	0	75	0	0
Pears, raw, the bushel	0	0	6	0	0	3
—— dried, the bushel	0	2	0	0	2	0
Peel of Lemons, the cwt.	0	1	0	0	1	0
—— of Oranges, the cwt.	0	1	0	0	1	0
—— of Pomegranates, the cwt.	0	1	0	0	1	0
Plums (commonly called French Plums) and Prunelloes, the cwt.	1	0	0	1	0	0
—— dried or preserved, the cwt.	1	7	6	1	7	6
Pomegranates, the 1000	0	5	0	0	5	0
Prunes . the cwt.	0	7	0	0	7	0
Quinces . the 1000	0	1	0	0	1	0
Raisins . the cwt.	0	15	0	0	7	6
Tamarinds . the lb.	0	0	3	0	0	1
Grain, not rated as Corn or Seeds, viz.						
Barley, pearled, the cwt.	0	5	0	0	2	6
Beans, Kidney and French . the bushel	0	0	10	0	0	5
Rice, not rough, nor in the Husk . the cwt.	0	6	0	0	0	6
Rice, rough, and in the Husk . the quarter	0	7	0	0	0	1
Hay . . the load	0	16	0	0	8	0
Honey . . the cwt.	0	10	0	0	5	0
Hops . . the cwt.	4	10	0	4	10	0
Liquids, viz.						
Beer or Mum, the barrel	2	0	0	2	0	0
Spruce . the barrel	1	0	0	1	0	0
Ale and Beer of all Sorts . the barrel	2	0	0	2	0	0
Cider . the tun	10	10	0	10	10	0
Essence of Spruce, for every 100*l.* value	10	0	0	10	0	0
Juice of Lemons, Limes, and Oranges, the gallon	0	0	0½	0	0	0½
Mead . the gallon	0	5	6	0	5	6
Perry . . the tun	10	10	0	10	10	0
Vinegar . . the tun	18	18	0	18	18	0
Liquorice Roots, the cwt.	1	0	0	0	10	0
Paste . . the cwt.	1	0	0	0	10	0
Juice . . the cwt.	1	7	6	0	10	0
Powder . the cwt.	1	15	0	0	15	0
Macaroni and *Vermicelli*; the lb.	0	0	1	0	0	1

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class I. Animals (living) and Articles of Food—(*Continued*).						
Marmalade . the lb.	0	0	6	0	0	1
Oil Seed Cakes, the ton	0	1	0	0	1	0
Pickles of all Sorts, including the Vinegar, and not otherwise enumerated, the gallon	0	1	6	0	0	9
preserved in Salt, the gallon	0	0	6	0	0	3
Provisions, viz.						
Bacon . the cwt.	0	14	0	0	3	6
Beef, salted, not being corned beef, from and after 10th Oct. 1842, the cwt.	0	8	0	0	2	0
—— fresh, or slightly salted . the cwt.	0	8	0	0	2	0
Butter . the cwt.	1	0	0	0	5	0
Cheese . the cwt.	0	10	6	0	2	6
Eggs . the 120	0	0	10	0	0	2½
Hams of all kinds, the cwt.	0	14	0	0	3	6
Lard . the cwt.	0	2	0	0	0	6
Pork, salted (not Hams), from and after 10th Oct. 1842 the cwt.	0	8	0	0	2	0
—— fresh . the cwt.	0	8	0	0	2	0
Puddings and Sausages, the lb.	0	0	3	0	0	1
Tongues . the cwt.	0	10	0	0	2	6
Salted or fresh Meat, not otherwise described . the cwt.	0	8	0	0	2	0
Sago . . the cwt.	0	1	0	0	1	0
Succades and *Confectionery*, including all Fruits and Vegetables preserved in Sugar, the lb.	0	0	6	0	0	1
Tapioca . the cwt.	0	1	0	0	1	0
Truffles . the lb.	0	1	0	0	1	0
Vanelloes . the lb.	0	5	0	0	5	0
Vegetables, viz.						
Lentiles . the bushel	0	0	3	0	0	1½
Onions . the bushel	0	0	6	0	0	3
Plantains . the cwt.	0	0	2	0	0	2
Potatoes . the cwt.	0	0	2	0	0	1
All Vegetables not enumerated or described, for every 100*l.* value	5	0	0	2	10	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class II. Spices.						
Spices, viz.						
Cassia Lignea the lb.	0	0	3	0	0	[illegible]
——— Buds . the lb.	0	0	6	0	0	[illegible]
Cinnamon . the lb.	0	0	6	0	[illegible]	[illegible]
Cloves . . the lb.	0	0	6	0	[illegible]	[illegible]
Ginger . the cwt.	0	10	0	0	5	[illegible]
———, preserved, the lb.	0	0	6	0	0	[illegible]
Mace . the lb.	0	2	6	0	2	[illegible]
Nutmegs, from and after 5th July, 1843, the lb.	0	3	6	0	2	[illegible]
——— wild, in the shell . the lb.	0	0	3	0	0	[illegible]
Pimento . the cwt.	0	5	0	0	5	[illegible]
Pepper of all sorts, the lb.	0	0	6	0	0	[illegible]
Class III. Seeds.						
Seeds, viz.						
Acorns . the bushel	0	1	0	0	0	[illegible]
Anniseed . the cwt.	0	5	0	0	2	[illegible]
Canary . the bushel	0	4	0	0	2	[illegible]
Carraway . the cwt.	0	10	0	0	5	[illegible]
Carrot . the cwt.	0	10	0	0	5	[illegible]
Clover . the cwt.	0	10	0	0	5	[illegible]
Cole . the quarter	0	0	1	0	0	[illegible]
Coriander . the cwt.	0	5	0	0	2	[illegible]
Cummin . the cwt.	0	5	0	0	2	[illegible]
Fennugreek the cwt.	0	5	0	0	2	[illegible]
Flax . the quarter	0	0	1	0	0	[illegible]
Forest . the cwt.	0	10	0	0	5	[illegible]
Garden, not particularly enumerated or described, nor otherwise charged with duty, the lb.	0	0	1	0	0	[illegible]
Grass of all sorts, not particularly enumerated, or otherwise charged with duty, the cwt.	0	5	0	0	2	[illegible]
Hemp . the quarter	0	0	1	0	0	[illegible]
Leek . the cwt.	1	0	0	0	10	[illegible]
Lettuce . the quarter	0	1	0	0	1	[illegible]
Linseed . the quarter	0	0	1	0	0	[illegible]
Lucerne . the cwt.	0	5	0	0	5	[illegible]
Lupines . the cwt.	0	5	0	0	5	[illegible]
Maw . the quarter	0	1	0	0	[illegible]	[illegible]
Millet . the cwt.	0	5	0	0	[illegible]	[illegible]
Mustard the Bushel	0	1	3	0	[illegible]	[illegible]
Onion, from and after 5th July, 1843, the cwt.	1	0	0	0	1[illegible]	[illegible]

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class III. Seeds—*continued.*						
Seeds—(continued).						
Parsley . the cwt.	0	10	0	0	5	0
Poppy . the quarter	0	1	0	0	0	6
Quince . the cwt.	0	10	0	0	5	0
Rape . the quarter	0	0	1	0	0	1
Sesamum the quarter	0	0	1	0	0	1
Shrub or Tree, the cwt.	0	10	0	0	5	0
Tares . the quarter	0	5	0	0	2	6
Trefoil . the cwt.	0	5	0	0	2	6
Worm . the cwt.	0	5	0	0	2	6
All Seeds not particularly enumerated or described, nor otherwise charged with Duty, commonly used for expressing Oil therefrom, the quarter	0	0	1	0	0	1
All other Seeds not particularly enumerated or described, nor otherwise charged with Duty, for every 100*l.* value	10	0	0	5	0	0
Class IV. Woods.						
Amboyna Wood the ton	1	0	0	0	5	0
Bar Wood . the ton	0	2	0	0	2	0
Beef Wood . the ton	0	5	0	0	2	6
Black Wood . the ton	1	0	0	0	5	0
Box Wood . the ton	0	10	0	0	2	6
Brazil Wood . the ton	0	2	0	0	2	0
Brazilleto Wood the ton	0	2	0	0	2	0
Cam Wood . the ton	0	2	0	0	2	0
Cedar . the ton	0	10	0	0	2	6
Ebony . the ton	0	10	0	0	2	6
King Wood . the ton	0	10	0	0	2	6
Lignum Vitæ . the ton	0	5	0	0	2	6
Log Wood . the ton	0	2	0	0	2	0
Mahogany . the ton	1	0	0	0	5	0
Imported from the Bay of Honduras, or the Mosquito Shore, the ton	0	5	0	0	5	0
Nicaragua Wood, the ton	0	2	0	0	2	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class IV. Woods—*continued.*						
Olive Wood . the ton	0	10	0	0	2	6
Red or *Guinea* Wood, the ton	0	2	0	0	2	0
Rosewood . the ton	1	0	0	0	5	0
Imported from the Bay of Honduras, or the Mosquito Shore, the ton	0	5	0	0	5	0
Sapan Wood . the ton	0	2	0	0	2	0
Santa Maria Wood, the ton	0	5	0	0	2	6
Satin Wood . the ton	0	10	0	0	2	6
Saunders, Red . the ton	0	2	0	0	2	0
——— *Yellow* the ton	0	5	0	0	2	6
Speckled Wood the ton	0	5	0	0	2	6
Sweet Wood . the ton	0	5	0	0	2	6
Tulip Wood . the ton	0	10	0	0	2	6
Walnut Wood . the ton	0	5	0	0	1	0
Zebra Wood . the ton	0	5	0	0	2	6
Class V. Timber and Woods, not otherwise charged*.						
Timber or Wood, not being Deals, Battens, Boards, Staves, Handspikes, Oars, Lathwood, or other Timber or Wood, sawn, split, or otherwise dressed, except hewn, and not being Timber or Wood otherwise charged with Duty, the load of 50 cubic feet	* From and after the 10th of October, 1842, 1 10 0; From and after the 10th of October, 1843, 1 5 0			0	1	0
Deals, Battens, Boards, or other Timber or Wood, sawn or split, and not otherwise charged with Duty, the load of 50 cubic feet	From and after the 10th of October, 1842, 1 18 0; From and after the 10th of October, 1843, 1 12 0			0	2	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class I. Animals (living) and Articles of Food—(*Continued*).						
Marmalade . the lb.	0	0	6	0	0	1
Oil Seed Cakes, the ton	0	1	0	0	1	0
Pickles of all Sorts, including the Vinegar, and not otherwise enumerated, the gallon	0	1	6	0	0	9
preserved in Salt, the gallon	0	0	6	0	0	3
Provisions, viz.						
Bacon . the cwt.	0	14	0	0	3	6
Beef, salted, not being corned beef, from and after 10th Oct. 1842, the cwt.	0	8	0	0	2	0
—— fresh, or slightly salted . the cwt.	0	8	0	0	2	0
Butter . the cwt.	1	0	0	0	5	0
Cheese . the cwt.	0	10	6	0	2	6
Eggs . the 120	0	0	10	0	0	2½
Hams of all kinds, the cwt.	0	14	0	0	3	6
Lard . the cwt.	0	2	0	0	0	6
Pork, salted (not Hams), from and after 10th Oct. 1842 the cwt.	0	8	0	0	2	0
—— fresh . the cwt.	0	8	0	0	2	0
Puddings and Sausages, the lb.	0	0	3	0	0	1
Tongues . the cwt.	0	10	0	0	2	6
Salted or fresh Meat, not otherwise described . the cwt.	0	8	0	0	2	0
Sago . . the cwt.	0	1	0	0	1	0
Succades and *Confectionery*, including all Fruits and Vegetables preserved in Sugar, the lb.	0	0	6	0	0	1
Tapioca . the cwt.	0	1	0	0	1	0
Truffles . the lb.	0	1	0	0	1	0
Vanelloes . the lb.	0	5	0	0	5	0
Vegetables, viz.						
Lentiles . the bushel	0	0	3	0	0	1½
Onions . the bushel	0	0	6	0	0	3
Plantains . the cwt.	0	0	2	0	0	2
Potatoes . the cwt.	0	0	2	0	0	1
All Vegetables not enumerated or described, for every 100*l.* value	5	0	0	2	10	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class II. Spices.						
Spices, viz.						
Cassia Lignea the lb.	0	0	3	0	0	1
——— Buds . the lb.	0	0	6	0	0	3
Cinnamon . the lb.	0	0	6	0	[illegible]	[illegible]
Cloves . . the lb.	0	0	6	0	[illegible]	[illegible]
Ginger . the cwt.	0	10	0	0	5	[illegible]
———, preserved, the lb.	0	0	6	0	0	1
Mace . the lb.	0	2	6	0	2	6
Nutmegs, from and after 5th July, 1843, the lb.	0	3	6	0	2	6
——— wild, in the shell . the lb.	0	0	3	0	0	3
Pimento . the cwt.	0	5	0	0	5	0
Pepper of all sorts, the lb.	0	0	6	0	0	6
Class III. Seeds.						
Seeds, viz.						
Acorns . the bushel	0	1	0	0	0	6
Anniseed . the cwt.	0	5	0	0	2	6
Canary . the bushel	0	4	0	0	2	0
Carraway . the cwt.	0	10	0	0	5	0
Carrot . the cwt.	0	10	0	0	5	0
Clover . the cwt.	0	10	0	0	5	0
Cole . the quarter	0	0	1	0	0	1
Coriander . the cwt.	0	5	0	0	2	6
Cummin . the cwt.	0	5	0	0	2	6
Fennugreek the cwt.	0	5	0	0	2	6
Flax . the quarter	0	0	1	0	0	1
Forest . the cwt.	0	10	0	0	5	0
Garden, not particularly enumerated or described, nor otherwise charged with duty, the lb.	0	0	1	0	0	1
Grass of all sorts, not particularly enumerated, or otherwise charged with duty, the cwt.	0	5	0	0	2	6
Hemp . the quarter	0	0	1	0	0	1
Leek . the cwt.	1	0	0	0	10	0
Lettuce . the quarter	0	1	0	0	1	0
Linseed . the quarter	0	0	1	0	0	1
Lucerne . the cwt.	0	5	0	0	5	0
Lupines . the cwt.	0	5	0	0	5	0
Maw . the quarter	0	1	0	0	0	6
Millet . the cwt.	0	5	0	0	2	[illegible]
Mustard the Bushel	0	1	3	0	0	[illegible]
Onion, from and after 5th July, 1843, the cwt.	1	0	0	0	10	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class III. Seeds—*continued.*						
Seeds—(continued).						
Parsley . the cwt.	0	10	0	0	5	0
Poppy . the quarter	0	1	0	0	0	6
Quince . the cwt.	0	10	0	0	5	0
Rape . the quarter	0	0	1	0	0	1
Sesamum the quarter	0	0	1	0	0	1
Shrub or Tree, the cwt.	0	10	0	0	5	0
Tares . the quarter	0	5	0	0	2	6
Trefoil . the cwt.	0	5	0	0	2	6
Worm . the cwt.	0	5	0	0	2	6
All Seeds not particularly enumerated or described, nor otherwise charged with Duty, commonly used for expressing Oil therefrom, the quarter	0	0	1	0	0	1
All other Seeds not particularly enumerated or described, nor otherwise charged with Duty, for every 100*l.* value	10	0	0	5	0	0
Class IV. Woods.						
Amboyna Wood the ton	1	0	0	0	5	0
Bar Wood . the ton	0	2	0	0	2	0
Beef Wood . the ton	0	5	0	0	2	6
Black Wood . the ton	1	0	0	0	5	0
Box Wood . the ton	0	10	0	0	2	6
Brazil Wood . the ton	0	2	0	0	2	0
Brazilleto Wood the ton	0	2	0	0	2	0
Cam Wood . the ton	0	2	0	0	2	0
Cedar . the ton	0	10	0	0	2	6
Ebony . the ton	0	10	0	0	2	6
King Wood . the ton	0	10	0	0	2	6
Lignum Vitæ . the ton	0	5	0	0	2	6
Log Wood . the ton	0	2	0	0	2	0
Mahogany . the ton	1	0	0	0	5	0
Imported from the Bay of Honduras, or the Mosquito Shore, the ton	0	5	0	0	5	0
Nicaragua Wood, the ton	0	2	0	0	2	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class IV. Woods—*continued.*						
Olive Wood . the ton	0	10	0	0	2	6
Red or *Guinea* Wood, the ton	0	2	0	0	2	0
Rosewood . the ton	1	0	0	0	5	0
Imported from the Bay of Honduras, or the Mosquito Shore, the ton	0	5	0	0	5	0
Sapan Wood . the ton	0	2	0	0	2	0
Santa Maria Wood, the ton	0	5	0	0	2	6
Satin Wood . the ton	0	10	0	0	2	6
Saunders, Red . the ton	0	2	0	0	2	0
——— *Yellow* the ton	0	5	0	0	2	6
Speckled Wood the ton	0	5	0	0	2	6
Sweet Wood . the ton	0	5	0	0	2	6
Tulip Wood . the ton	0	10	0	0	2	6
Walnut Wood . the ton	0	5	0	0	1	0
Zebra Wood . the ton	0	5	0	0	2	6
Class V. Timber and Woods, not otherwise charged*.						
Timber or Wood, not being Deals, Battens, Boards, Staves, Handspikes, Oars, Lathwood, or other Timber or Wood, sawn, split, or otherwise dressed, except hewn, and not being Timber or Wood otherwise charged with Duty, the load of 50 cubic feet	* From and after the 10th of October, 1842, 1 10 0 / From and after the 10th of October, 1843, 1 5 0			0	1	0
Deals, Battens, Boards, or other Timber or Wood, sawn or split, and not otherwise charged with Duty, the load of 50 cubic feet	From and after the 10th of October, 1842, 1 18 0 / From and after the 10th of October, 1843, 1 12 0			0	2	0

TIMBER AND WOODS NOT OTHERWISE CHARGED—(*Continued*).

Or, in lieu of the Duties hereinbefore imposed upon Wood by the Load, according to the Cubic Content, the Importer may have the Option, at the Time of passing the first Entry, of entering Battens, Batten Ends, Boards, Deals, Deal Ends, and Plank, by Tale, if of or from Foreign Countries, according the following Dimensions, viz. :—

		From and after the 10th of October, 1842.		*From and after the 10th of October*, 1843.	
	Not above 7 Inches in Width.	Not above 1¼ Inch in Thickness.	Above 1¼ Inch and not above 2¾ in Thickness.	Not above 1¼ Inch in Thickness.	Above 1¼ Inch and not above 2¾ in Thickness.
Battens and Batten Ends.		£ s. d.	£ s. d.	£ s. d.	£ s. d.
Not above 6 Feet in Length, the 120	- „ -	1 16 7	3 13 2	1 10 10	3 1 7
Above 6 and not above 9 Feet in Length, the 120	- „ -	2 14 10	5 9 9	2 6 2	4 12 5
Above 9 and not above 12 Feet in Length, the 120	- „ -	3 13 2	7 6 4	3 1 7	6 3 2
Above 12 and not above 15 Feet in Length, the 120	- „ -	4 11 5	9 2 10	3 17 0	7 14 0
Above 15 and not above 18 Feet in Length, the 120	- „ -	5 9 9	10 19 6	4 12 5	9 4 10
Above 18 and not above 21 Feet in Length, the 120	- „ -	6 8 0	12 16 0	5 7 9	10 15 7
	Not above 9½ Inches in Width.	Not above 1½ Inch in Thickness.	Above 1½ Inch and not above 3¼ in Thickness.	Not above 1½ Inch in Thickness.	Above 1½ Inch and not above 3¼ in Thickness.
Boards, Deals, Deal Ends, and Plank.					
Not above 6 Feet in Length, the 120	- „ -	2 18 8	5 17 4	2 9 5	4 18 10
Above 6 and not above 9 Feet in Length, the 120	- „ -	4 8 0	8 16 0	3 14 1	7 8 3
Above 9 and not above 12 Feet in Length, the 120	- „ -	5 17 4	11 14 8	4 18 10	9 17 8
Above 12 and not above 15 Feet in Length, the 120	- „ -	7 6 8	14 13 4	6 3 6	12 7 1
Above 15 and not above 18 Feet in Length, the 120	- „ -	8 16 0	17 12 0	7 8 3	14 16 6
Above 18 and not above 21 Feet in Length, the 120	- „ -	10 5 4	20 10 8	8 12 11	17 5 11
Not above 6 Feet in Length, the 120	Above 9½ Inches and not above 11½ in Width.	3 11 0	7 2 0	2 19 10	5 19 7
Above 6 and not above 9 Feet in Length, the 120	- „ -	5 6 6	10 13 0	4 9 8	8 19 5
Above 9 and not above 12 Feet in Length, the 120	- „ -	7 2 0	14 4 0	5 19 7	11 19 2
Above 12 and not above 15 Feet in Length, the 120	- „ -	8 17 6	17 15 0	7 9 6	14 19 0
Above 15 and not above 18 Feet in Length, the 120	- „ -	10 13 0	21 6 0	8 19 5	17 18 9
Above 18 and not above 21 Feet in Length, the 120	- „ -	12 8 6	24 17 0	10 9 4	20 18 7

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions £	s.	d.
CLASS V. TIMBER AND WOODS, NOT OTHERWISE CHARGED—(*Continued*).						
Timber—(continued).						
Staves, the load of 50 cubic feet	1	8	0	0	2	0
Birch, hewn, not exceeding 3 Feet in Length, nor exceeding 8 Inches square, imported for the sole purpose of making Herring Barrels for the use of the Fisheries, the load of 50 feet	0	1	0	0	1	0
Firewood . the fathom of 216 cubic feet	0	10	0	Free.		
Handspikes, not exceeding 7 feet in length . the 120	1	0	0	0	0	6
——— exceeding 7 feet in length, the 120	2	0	0	0	1	0
Hoops, not exceeding 7½ feet in length, the 1000	0	2	0	0	0	4
——— not exceeding 9 feet in length, the 1000	0	3	0	0	0	6
——— exceeding 9 feet in length . the 1000	0	5	0	0	1	0
Knees, under 5 inches square . the 120	0	10	0	0	0	3
——— 5 inches, and under 8 inches square, the 120	2	0	0	0	1	0
Lathwood, the fathom of 216 cubic feet	2	0	0	0	1	0
Oars . the 120	7	10	0	0	3	9
Spars or *Poles*, under 22 feet in length, and under 4 inches in diameter . the 120	1	0	0	0	0	6
——— ——— 22 feet in length and upwards, and under 4 inches in diameter . the 120	2	0	0	0	1	0
——— ——— of all lengths, 4 inches, and under 6 inches in diameter . the 120	4	0	0	0	2	0
Spokes for Wheels, not exceeding 2 feet in length . the 1000	2	0	0	0	1	0
——— exceeding 2 feet in length . the 1000	4	0	0	0	2	0
Teake, the load of 50 cubic feet	0	10	0	0	1	0
Wastewood, viz. Billet-wood or Brushwood, used for the purposes of stowage, for every 100*l.* value	5	0	0	0	5	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
CLASS V. TIMBER AND WOODS, NOT OTHERWISE CHARGED—(*Continued*).						
Wood, planed, or otherwise dressed or prepared for use, and not particularly enumerated, nor otherwise charged with duty . .	9*d* per foot of cubic contents, and further for every 100*l.* value, 10	0	0	For every 100*l.* value, 5	0	0
	From and after the 10th October 1842, 7½*d.* per foot of cubic contents, and further for every 100*l.* value, 10	0	0			
CLASS VI. ORES, MINERALS, METALS, AND MANUFACTURES THEREOF.						
Antimony, Ore of, the ton	0	1	0	0	1	0
Crude . the cwt.	0	2	0	0	0	6
Regulus . the cwt.	0	4	0	0	1	0
Arsenic . the cwt.	0	1	0	0	0	6
Brass, Manufactures of, for every 100*l.* value	15	0	0	15	0	0
Powder of . the lb.	0	0	6	0	0	6
Brimstone . the cwt.	0	0	6	0	0	3
Refined, in rolls, the cwt.	0	2	0	0	1	0
In flour . the cwt.	0	2	0	0	1	0
Bronze Manufactures:—						
All Works of Art of, the cwt.	1	0	0	1	0	0
Other Manufactures of, for every 100*l.* value	15	0	0	15	0	0
Powder of, for every 100*l.* value	15	0	0	15	0	0
Other Manufactures of, for every 100*l.* value	15	0	0	15	0	0
Bullion and Foreign Coin of Gold or Silver, and Ore of Gold or Silver, or of which the major Part in Value is Gold and Silver . . .	Free.			Free.		
Buttons, for every 100*l.* value	15	0	0	15	0	0
Coals (*a*), Culm, and Cinders . . the ton	0	1	0	0	0	6
Cobalt Ore, for every 100*l.* value	1	0	0	1	0	0
Copper, Ore of, viz. Containing not more than 15 Parts of Copper, per ton of metal	3	0	0	1	0	0

(*a*) It may not perhaps be irrelevant to state that the 10 Geo. 4, c. 136, continued by 3 & 4 Vict. c. cxxxi, imposes a duty of 6*d.* per chaldron on coals imported into the port of London.

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
CLASS VI. ORES, MINERALS, METALS, AND MANUFACTURES THEREOF— (*Continued*).						
Copper—(continued).						
Containing not more than 20 Parts of Copper, per ton of metal	4	10	0	1	0	0
Containing more than 20 Parts of Copper, per ton of metal	6	0	0	1	0	0
Old, fit only to be remanufactured, the cwt.	0	7	6	0	3	6
Unwrought, viz.						
In Bricks or Pigs, Rose Copper, and all cast Copper . the cwt.	0	8	9	0	4	0
In part wrought, viz.						
Bars, Rods, or Ingots, hammered or raised, the cwt.	0	10	0	0	5	0
In Plates, and Copper Coin . . the cwt.	0	10	0	0	5	0
Manufactures of Copper not otherwise enumerated or described, and Copper Plates engraved, for every 100*l.* value	15	0	0	15	0	0
Copper or *Brass* Wire, for every 100*l.* value	12	10	0	12	10	0
Copperas, Blue . the ton	1	0	0	0	10	0
——— Green, the ton	1	0	0	0	10	0
——— White, the ton	1	0	0	0	10	0
Crystal, rough, for every 100*l.* value	5	0	0	2	10	0
Cut or manufactured, except Beads, for every 100*l* value	15	0	0	15	0	0
Beads . the 1000	0	5	0	0	5	0
Gold, Leaves of, the 100	0	3	0	0	3	0
Iron, Ore of . the ton	0	2	0	0	0	6
Pig . . the ton	0	5	0	0	1	0
Bars, unwrought, the ton	1	0	0	0	2	6
Old broken and old cast . the ton	0	5	0	0	1	0
And Steel, wrought, not otherwise enumerated, for every 100*l* value	15	0	0	15	0	0
Bloom . the ton	0	7	6	0	2	6
Chromate of, the ton	0	5	0	0	2	6
Slit or hammered into Rods . the ton	1	10	0	0	15	0
Cast . . the ton	1	10	0	0	15	0
Hoops . the ton	1	10	0	0	15	0
Lapis Calaminaris, the ton	0	1	0	0	1	0
Latten . . the cwt.	0	1	0	0	0	6
Shaven . the cwt.	0	1	0	0	0	6
Wire, for every 100*l.* value	12	10	0	12	10	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
CLASS VI. ORES, MINERALS, METALS, AND MANUFACTURES THEREOF— (*Continued*).						
Lead, Ore of . the ton	0	10	0	0	2	0
Black . . the ton	1	0	0	0	5	0
Pig and Sheet, the ton	1	0	0	0	5	0
Red . . the ton	1	10	0	0	15	0
White . the ton	2	5	0	1	2	6
Chromate of . the ton	5	0	0	2	10	0
—— Manufactures of, not otherwise enumerated, for every 100*l.* value	15	0	0	15	0	0
Litharge . the ton	1	0	0	0	10	0
Manganese Ore, the ton	1	0	0	0	1	0
Medals of Gold and Silver	Free.			Free.		
Of any other Sort, for every 100*l.* value	5	0	0	5	0	0
Mercury, prepared, for every 100*l.* value	10	0	0	10	0	0
Metal, viz.						
Bell Metal . the ton	2	0	0	2	0	0
Leaf (except Gold), per packet of 250 leaves	0	0	1	0	0	1
Minerals and Fossils not enumerated, for every 100*l.* value	5	0	0	1	0	0
Specimens of Minerals, Fossils, or Ores not enumerated, and not exceeding 14lbs. in weight each Specimen	Free.			Free.		
Ditto, exceeding 14lbs. in weight, for every 100*l.* value	5	0	0	1	0	0
Illustrative of Natural History . . .	Free.			Free,		
Nickel, Ore of, for every 100*l.* value	1	0	0	1	0	0
Metallic, and Oxide of, refined . for every 100*l.* value	10	0	0	10	0	0
Ore, not particularly charged with Duty, for every 100*l.* value	2	0	0	0	10	0
Orsedew . . the cwt.	0	10	0	0	10	0
Pewter, Manufactures of, for every 100*l.* value	15	0	0	15	0	0
Plate of Gold, for every 100*l.* value	10	0	0	10	0	0
Silver, gilt and ungilt, for every 100*l.* value	together with the Stamp Duty.			together with the Stamp Duty.		
Battered . .	Free.			Free.		
Wire, gilt or plated, for every 100*l.* value	12	10	0	12	10	0
Silver, for every 100*l.* value	12	10	10	12	10	10
Platina, and Ore of, for every 100*l.* value	0	10	0	0	10	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions £	s.	d.
Class VI. Ores, Minerals, Metals, and Manufactures thereof— (*Continued*).						
Quicksilver . the lb.	0	0	1	0	0	1
Spelter or *Zinc*, viz.						
Crude, in Cakes, and not rolled or otherwise manufactured, the ton	0	1	0	0	1	0
Rolled, but not otherwise manufactured, the ton	2	10	0	2	10	0
Manufactures of, for every 100*l.* value	10	0	0	10	0	0
Steel, Manufactures of, for every 100*l.* value	15	0	0	15	0	0
Unwrought, for every 100*l.* value	15	0	0	—		
Unwrought, of and from British Possessions . the ton	.		.	0	1	0
Talc . . the cwt.	0	10	0	0	2	6
Tin, Ore and Regulus of, the ton	2	10	0	0	10	0
—— in Blocks, Ingots, Bars, or Slabs, the cwt.	0	6	0	0	3	0
—— Manufactures of, not otherwise enumerated, for every 100*l.* value	15	0	0	15	0	0
Foil . the lb.	0	0	6	0	0	6
Class VII. Oils, Extracts, Perfumery, &c.						
Aquafortis . the cwt.	0	5	0	0	5	0
Citric Acid . the lb.	0	0	2	0	0	2
Essences not otherwise described, viz.						
Extract of Cardamoms, for every 100*l.* value	20	0	0	20	0	0
——— Coculus Indicus, for every 100*l.* value	20	0	0	20	0	0
——— Guinea Grains of Paradise, for every 100*l.* value	20	0	0	20	0	0
——— Licorice, for every 100*l.* value	20	0	0	20	0	0
——— Nux Vomica, for every 100*l.* value	20	0	0	20	0	0
——— Opium, for every 100*l.* value	20	0	0	20	0	0
——— Guinea Pepper, for every 100*l.* value	20	0	0	20	0	0
——— Peruvian, or Jesuits Bark, for every 100*l.* value	20	0	0	20	0	0
——— Quassia, for every 100*l.* value	20	0	0	20	0	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries £	s.	d.	Of and from British Possessions. £	s.	d.
Class VII. Oils, Extracts, Perfumery, &c.— (*Continued*).						
Essences—(continued).						
Extract of Radix Rhataniæ, for every 100*l.* value	20	0	0	20	0	0
——— Vitriol, for every 100*l.* value	20	0	0	20	0	0
Extract or Preparation of any Article, not being particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* value	20	0	0	20	0	0
Or, and in lieu of the above Duty, at the option of the Importer, the lb.	0	5	0	0	5	0
Nuts or Kernels thereof, not particularly enumerated or charged with Duty, and commonly used for expressing oil therefrom . the ton	0	1	0	0	0	6
Oil of Almonds . the lb.	0	0	2	0	0	2
Bays . the lb.	0	0	2	0	0	2
Animal, raw, not otherwise enumerated . the cwt.	0	1	3	0	1	3
Castor . the cwt.	0	1	3	0	1	3
Chemical, Essential, or Perfumed, viz.						
Carraway . the lb.	0	2	0	0	2	0
Cloves . . the lb.	0	4	0	0	4	0
Lavender . the lb.	0	2	0	0	2	0
Mint . . . the lb.	0	2	0	0	2	0
Peppermint . the lb.	0	2	0	0	2	0
Spike . . the lb.	0	2	0	0	2	0
Cassia . the lb.	0	1	0	0	1	0
Bergamot . the lb.	0	1	0	0	1	0
Lemon . the lb.	0	1	0	0	1	0
Otto of Roses the lb.	0	1	0	0	1	0
Thyme . the lb.	0	1	0	0	1	0
All other Sorts, the lb.	0	1	0	0	1	0
Cocoa Nut . the cwt.	0	1	3	0	0	7½
Linseed . the tun	6	0	0	1	0	0
Hempseed and Rapeseed . the tun	6	0	0	1	0	0
Olive . the tun	2	0	0	1	0	0
—— imported in a Ship belonging to any of the Subjects of the King of the Two Sicilies, the tun	4	0	0	—		
Palm . the cwt.	0	0	6	0	0	6
Paran . the tun	2	0	0	1	0	0
Rock . the cwt.	0	6	0	0	3	0
Seed, not otherwise						

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
Class VII. Oils, Extracts, Perfumery, &c.—(*Continued*).						
Oil—(*continued*). enumerated or described . the tun	6	0	0	1	0	0
Oil, Train, Blubber, and Spermaceti, the Produce of Fish or Creatures living in the Sea, taken and caught by the Crews of British Vessels, and imported direct from the Fishery, or from any British Possession, in a British Vessel . the tun	..			0	1	0
Train, and Blubber, the Produce of Fish or Creatures living in the Sea, of Foreign Fishing, from and after 5th July, 1843, the tun	6	0	0	—		
Spermaceti of Foreign Fishing, from and after 5th July, 1843, the tun	15	0	0	—		
Walnut . the cwt	0	6	0	0	3	0
or Spirit of Turpentine, the cwt.	0	5	0	0	2	6
not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* value	20	0	0	10	0	0
Orange Flower Water, the lb.	0	0	1	0	0	1
Perfumery not otherwise charged, for every 100*l.* value	20	0	0	20	0	0
Pomatum, for every 100*l.* value	20	0	0	20	0	0
Water, Cologne, the Flask, (30 containing not more than One Gallon) .	0	1	0	0	1	0
Class VIII. Dye Stuffs, Drugs, Resins, &c.						
Alkali, not being Barilla, the cwt.	0	1	6	0	1	6
Alkanet Root . the cwt.	0	1	0	0	1	0
Aloes . the lb.	0	0	2	0	0	1
Alum . the cwt.	0	2	0	0	2	0
Rock . the cwt.	0	2	0	0	2	0
Amber, rough, the cwt.	0	5	0	0	5	0
Manufactures of, not enumerated, for every 100*l.* value	15	0	0	15	0	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
Class VIII. Dye Stuffs, Drugs, Resins, &c.—(*Continued*).						
Ambergris . the oz.	0	0	3	0	0	3
Angelica . the cwt.	0	4	0	0	4	0
Annatto, Roll and Flag, the cwt.	0	1	0	0	1	0
Aristolochia . the cwt.	0	1	0	0	1	0
Argol . the cwt.	0	0	6	0	0	6
Ashes, viz.						
Pearl and Pot, the cwt.	0	0	6	Free.		
Soap Weed and Wood, the cwt.	0	0	6	Free.		
not enumerated, for every 100*l.* value	5	0	0	Free.		
Asphaltum . the ton	0	1	0	0	1	0
Balsam, Canada, the lb.	0	0	1	0	0	1
Capivi . the cwt.	0	4	0	0	4	0
Peru . the lb.	0	0	3	0	0	3
Riga . the lb.	0	0	1	0	0	1
—— and further, as Foreign Spirits, for every gallon	1	2	6	1	2	6
Tolu . the lb.	0	0	2	0	0	2
Balm of Gilead, and all Balsams not other wise enumerated or described . the lb.	0	0	6	0	0	6
Barilla . the ton	0	5	0	0	5	0
Bark, Peruvian, the cwt.	0	1	0	0	1	0
Cascarilla . the cwt.	0	1	0	0	1	0
of other Sorts, the cwt.	0	1	0	0	1	0
for Tanners or Dyers' Use . the cwt.	0	0	3	0	0	1
Extract of, or other Vegetable Substances to be used only for tanning Leather, the cwt.	0	1	0	0	0	1
Berries, Bay, the cwt.	0	1	0	0	1	0
Juniper . the cwt.	0	1	0	0	1	0
Yellow . the cwt.	0	1	0	0	1	0
not enumerated, commonly made use of in Chemical Processes, the ton	0	1	0	0	1	0
Bitumen Judaicum, the ton	0	1	0	0	1	0
Boracic Acid, the cwt.	0	0	6	0	0	6
Borax, refined, the cwt.	0	5	0	0	5	0
Camomile Flowers, the lb.	0	0	1	0	0	1
Camphor . the cwt.	0	1	0	0	1	0
refined . the cwt.	0	10	0	0	10	0
Canella Alba . the lb.	0	0	1	0	0	1
Cantharides . the lb.	0	0	3	0	0	3
Cardamoms . the lb.	0	0	2	0	0	2
Caoutchouc . the cwt.	0	1	0	0	1	0
Carmine . the oz.	0	0	6	0	0	6
Cassia Fistula, the cwt.	0	5	0	0	5	0
Buds . the lb.	0	0	6	0	0	3
Castor . the cwt.	0	2	0	0	2	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class VIII. Dye Stuffs, Drugs, Resins, &c.—(*Continued*).						
China Root . the lb.	0	0	3	0	0	3
Cinnabaris Nativa, the cwt.	0	1	0	0	1	0
Citrate of Lime, the cwt.	0	5	0	0	5	0
Civet . the oz.	0	2	0	0	2	0
Cobalt . the ton	0	5	0	0	5	0
Coculus Indicus, the cwt.	0	7	6	0	7	6
Cochineal and Granilla, the cwt.	0	1	0	0	1	0
Dust . the cwt.	0	1	0	0	1	0
Colocynth . the lb.	0	0	1	0	0	1
Columbo Root, the cwt.	0	1	0	0	1	0
Cream of Tartar, the cwt.	0	1	0	0	1	0
Cubebs . the lb.	0	0	1	0	0	1
Cutch . the ton	0	5	0	0	5	0
Divi Divi . the ton	0	5	0	0	5	0
Drugs, not enumerated, the cwt.	0	1	0	0	1	0
Fustic . the ton	0	2	0	0	1	0
Gelatine . the cwt.	0	10	0	0	10	0
Galls . the cwt.	0	1	0	0	1	0
Gamboge . the cwt.	0	1	0	0	1	0
Gentian . the ton	0	5	0	0	5	0
Ginseng . the ton	0	5	0	0	5	0
Glue . the cwt.	0	3	0	0	3	0
Clippings, or Waste of any Kind, fit only for Glue, for every 100*l.* value	1	0	0	1	0	0
Grains, Guinea, and of Paradise, the cwt.	0	15	0	0	15	0
Gum, viz.						
Senegal . the cwt.	0	1	0	0	1	0
Arabic . the cwt.	0	1	0	0	1	0
Copal . the cwt.	0	1	0	0	1	0
Animi . the cwt.	0	1	0	0	1	0
Assafœtida the cwt.	0	1	0	0	1	0
Ammoniacum the cwt.	0	1	0	0	1	0
Guaiacum . the cwt.	0	1	0	0	1	0
Kino . the cwt.	0	1	0	0	1	0
Mastic . the cwt.	0	1	0	0	1	0
Tragacanth the cwt.	0	1	0	0	1	0
Euphorbium the cwt.	0	1	0	0	1	0
Shellac . the cwt.	0	1	0	0	1	0
Lac Dye . the cwt.	0	1	0	0	1	0
Seed . the cwt.	0	1	0	0	1	0
Gum, not enumerated, the cwt.	0	1	0	0	1	0
Hellebore . the cwt.	0	3	0	0	3	0
Isinglass . the cwt.	2	7	6	0	5	0
Indigo . the cwt.	0	2	0	0	1	0
Jalap . the lb.	0	0	1	0	0	1
Lac, viz. Sticklac, the cwt.	0	0	1	0	0	1
Lavender Flowers, the lb.	0	0	1	0	0	1
Leaves of Roses, the lb.	0	0	2	0	0	2
Leeches, for every 100*l.* value	5	0	0	5	0	0
Manna . the lb.	0	0	1	0	0	1

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class VIII. Dye Stuffs, Drugs, Resins, &c.—(*Continued*).						
Moss, viz.						
Lichen Islandicus, the ton	0	5	0	0	5	0
Rock, for Dyers' Use, the ton	0	5	0	0	5	0
not enumerated, for every 100*l.* value	1	0	0	1	0	0
Madder . the cwt.	0	0	6	0	0	6
Root . the cwt.	0	0	3	0	0	3
Morphia and its Salts, the lb.	0	5	0	0	5	0
Musk . the oz.	0	0	6	0	0	6
Myrrh . the cwt.	0	1	0	0	1	0
Nitre, viz. Cubic Nitre, the cwt.	0	0	6	0	0	6
Nux Vomica the cwt.	0	5	0	0	5	0
Ochre . the cwt.	0	0	6	0	0	6
Opium . the lb.	0	1	0	0	1	0
Olibanum . the cwt.	0	1	0	0	1	0
Orchal . the cwt.	0	1	0	0	1	0
Orpiment . the cwt.	0	1	0	0	1	0
Orris Root . the cwt.	0	5	0	0	5	0
Painters' Colours not particularly charged, viz. unmanufactured, for every 100*l.* value	1	0	0	1	0	0
manufactured, for every 100*l.* value	10	0	0	10	0	0
Pink Root . the lb.	0	0	1	0	0	1
Pitch, Burgundy, the cwt.	0	2	0	0	2	0
Quassia . the cwt.	0	10	0	0	10	0
Quinine, Sulphate of, the oz.	0	0	6	0	0	6
Radix, viz.						
Contrayervæ the lb.	0	0	1	0	0	1
Enulæ Campanæ, the cwt.	0	2	0	0	2	0
Eringii . the cwt.	0	2	0	0	2	0
Ipecacuanhæ the lb.	0	1	0	0	1	0
Rhataniæ . the lb.	0	0	1	0	0	1
Senekæ . the lb.	0	0	1	0	0	1
Serpentariæ, or Snake Root . the lb.	0	0	2	0	0	2
Rhubarb . the lb.	0	0	3	0	0	3
Saccharum Saturni, the cwt.	0	10	0	0	10	0
Safflower . the cwt.	0	1	0	0	1	0
Saffron . the lb.	0	1	0	0	1	0
Sal, viz.						
Ammoniac the cwt.	0	1	0	0	1	0
Limonum . the cwt.	0	1	0	0	1	0
Prunella . the cwt.	0	1	0	0	1	0
Salep or Salop the cwt.	0	1	0	0	1	0
Saltpetre . the cwt.	0	0	6	0	0	6
Sanguis Draconis, the cwt.	0	4	0	0	4	0
Sarsaparilla . the lb.	0	0	1	0	0	1
Sassafras . the cwt.	0	0	6	0	0	6
Scammony . the lb.	0	0	6	0	0	6
Senna . the lb.	0	0	1	0	0	1

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class VIII. Dye Stuffs, Drugs, Resins, &c.— (*Continued*).						
Shumack . the ton.	0	1	0	0	1	0
Smalts . the lb.	0	0	2	0	0	2
Squills, dried the cwt.	0	1	0	0	1	0
not dried, the cwt.	0	0	6	0	0	6
Tartaric Acid, the lb.	0	0	1	0	0	1
Terra, viz.						
Japonica . the ton	0	5	0	0	5	0
Sienna . the ton	0	10	0	0	10	0
Umbra . the cwt.	0	4	0	0	4	0
Verde . the ton	0	5	0	0	5	0
Tincal . the ton	0	1	0	0	0	6
Tornsal . the cwt.	0	1	0	0	1	0
Turmeric . the ton	0	5	0	0	0	1
Turpentine of Venice, Scio, or Cyprus, the lb.	0	0	10	0	0	10
Valonia . the ton	0	5	0	0	5	0
Varnish not otherwise described, for every 100*l.* value	15	0	0	15	0	0
Verdigris . the lb.	0	0	1	0	0	1
Verjuice . the ton	10	0	0	10	0	0
Vermilion . the lb.	0	0	3	0	0	3
Wax, Bees Wax, the cwt.	0	2	0	0	1	0
in any degree bleached the cwt.	1	0	0	0	10	0
Myrtle Wax, the cwt.	0	2	0	0	1	0
Sealing Wax, for every 100*l.* value	15	0	0	15	0	0
Woad . . the ton	0	5	0	0	5	0
Weld . . the ton	0	5	0	0	5	0
Zaffre . . the cwt.	0	1	0	0	1	0
Class IX. Skins and Furs.						
Skins, Furs, Pelts, and Tails, viz.						
Badger, undressed the dozen skins	0	1	6	0	0	9
Bear . the skin	0	3	0	0	2	0
Beaver, undressed the skin	0	0	8	0	0	2
Cat, undressed the dozen skins	0	1	0	0	0	6
Chinchilla, undressed the dozen skins	0	2	0	0	1	0
Coney, undressed the 100 skins	0	0	6	0	0	3
Deer, undressed, the skin	0	0	1	0	0	0½
——, Indian, half-dressed . the skin	0	0	2	0	0	1
——, Indian, tanned, tawed, or in any way dressed . the skin	0	0	6	0	0	3
Dog, in the Hair, not tanned, tawed, or in any way dressed the dozen skins	0	0	2	0	0	1

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class IX. Skins and Furs— (*Continued*).						
Skins, Furs, Pelts and Tails—(continued).						
Dog Fish, undressed the dozen skins	0	1	0	0	0	1
Elk, undressed, the skin	0	0	6	0	0	3
Ermine, undressed the dozen skins	0	0	6	0	0	3
——— dressed the dozen skins	0	2	0	0	1	0
Fisher, undressed the dozen skins	0	4	0	0	2	0
Fitch, undressed the dozen skins	0	1	0	0	0	6
Fox, undressed, the skin	0	0	6	0	0	3
—— Tails, undressed each	0	0	2	0	0	1
Goat, raw or undressed the dozen skins	0	0	3	0	0	2
—— tanned, tawed, or in any way dressed the dozen skins	0	5	0	0	2	6
Goose, undressed the dozen skins	0	1	0	0	0	6
Hare, undressed the 100 skins	0	0	6	0	0	3
Husse, undressed the dozen skins	0	3	0	0	1	6
Kangaroo, undressed the dozen skins	0	0	2	0	0	1
Kid, in the Hair, undressed, the 100 skins	0	0	4	0	0	2
—— dressed the 100 skins	0	5	0	0	2	6
—— ditto, and dyed or coloured, the 100 skins	0	10	0	0	5	0
Kolinski, undressed the dozen skins	0	1	0	0	0	6
Lamb, undressed, in the Wool, the 100 skins	0	0	4	0	0	2
—— tanned or tawed the 100 skins	0	5	0	0	2	6
—— tanned or tawed, dyed or coloured the 100 skins	0	10	0	0	5	0
—— dressed in Oil the 100 skins	2	0	0	1	0	0
Leopard, undressed the skin	0	1	6	0	0	9
Lion . ditto, the skin	0	0	6	0	0	3
Lynx . ditto, the skin	0	0	6	0	0	3
Marten ditto, the skin	0	0	4	0	0	2
——— Tails ditto the 100 tails	0	2	6	0	1	3
Mink ditto the dozen skins	0	1	0	0	0	6
—— dressed, the skin	0	0	6	0	0	3
Mole, undressed the 100 skins	0	3	0	0	1	6

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
CLASS IX. SKINS AND FURS—(*Continued*).						
Skins, Furs, Pelts, and Tails—(continued).						
Musquash, ditto the 100 skins	0	1	0	0	0	6
Nutrea . ditto the 100 skins	0	1	0	0	0	6
Otter . ditto the skin	0	1	0	0	0	6
Ounce . ditto the skin	0	0	2	0	0	1
Panther . ditto the skin	0	0	2	0	0	1
Pelts of all Sorts, undressed, the dozen pelts	0	1	0	0	0	6
—— tanned, tawed, or in any way dressed, the dozen pelts	0	5	0	0	2	6
Racoon, undressed the dozen skins	0	1	6	0	0	9
Sable, ditto . the skin	0	2	0	0	1	0
—— Tails or Tips, undressed, the dozen	0	1	6	0	0	9
Seal, in the hair, not tanned, tawed, or in any way dressed the skin	0	0	4	0	0	4
—— of British taking, imported direct from the fishery, or a British possession the dozen skins	.		.	0	0	1
Sheep, undressed, in the wool, the dozen skins	0	0	6	0	0	3
—— tanned or tawed the 100 skins	0	12	0	0	6	0
—— dressed in oil the 100 skins	1	0	0	0	10	0
Squirrel or Calabar, undressed, the 100 skins	0	3	0	0	1	6
—— tawed the 100 skins	0	5	0	0	2	6
—— Tails undressed, for every 100*l.* value	5	0	0	2	10	0
Swan, undressed the skin	0	0	3	0	0	2
Tiger, ditto the skin	0	1	6	0	0	9
Weasel, ditto the dozen skins	0	0	3	0	0	2
Wolf, ditto the dozen skins	0	2	0	0	1	0
—— tawed . the skin	0	5	0	0	2	6
Wolverings, undressed the skin	0	0	3	0	0	2
Skins and Furs, or pieces of Skins and Furs, raw or undressed, not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* value	5	0	0	2	10	0
Skins and Furs, or pieces of Skins and Furs tanned, curried, or in any way dressed, not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* value	10	0	0	5	0	0
Articles manufactured of Skins or Furs, for every 100*l.* value	20	0	0	10	0	0
CLASS X. HIDES, RAW AND TANNED						
Hides of Horse, Mare, Gelding, Buffalo, Bull, Cow, Ox, Calf, Kip, Swine, and Hog, Seacow, Elephant, and Eland or large Deer:						
—— not tanned, tawed, curried, or in any way dressed, viz.						
dry . the cwt.	0	0	6	0	0	2
wet . the cwt.	0	0	3	0	0	1
—— whether whole, cut, rounded, or trimmed, or pieces thereof, not cut into shapes, tanned, but not otherwise dressed . the lb.	0	0	2	0	0	1
—— tawed, curried, or in any way dressed, not being varnished, japanned, or enamelled, the lb.	0	0	4	0	0	2
—— if varnished, japanned, or enamelled, the lb.	0	0	6	0	0	3
Losh Hides . the lb.	0	0	4	0	0	2
Muscovy or *Russia Hides*, or pieces thereof, tanned, coloured, shaved, or otherwise dressed the lb.	0	0	4	0	0	2
Hides, or pieces thereof, raw or undressed, not otherwise enumerated for every 100*l.* value	5	0	0	2	10	0
—— or pieces thereof, tanned, tawed, curried,						

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
Class X. Hides, Raw and Tanned—(*Continued*).						
Hides—(continued). or in any way dressed, not otherwise enumerated, for every 100*l.* value	10	0	0	5	0	0
Class XI. Manufactures of Leather.						
Leather Manufactures, viz. *Boots, Shoes,* and *Calashes*, viz.						
Women's Boots and Calashes, the dozen pairs	0	12	0	0	12	0
———, if lined or trimmed with fur or other trimming, the dozen pairs	0	15	0	0	15	0
——— Shoes, with Cork or double Soles, quilted Shoes and Clogs, the dozen pairs	0	10	0	0	10	0
——— if trimmed or lined with fur or any other trimming the dozen pairs	0	12	0	0	12	0
——— Shoes of Silk, Satin, Jean, or other Stuffs, Kid, Morocco, or other Leather, the dozen pairs	0	9	0	0	9	0
——— Shoes, if trimmed or lined with fur or any other trimming, the dozen pairs	0	10	0	0	10	0
Girls' Boots, Shoes, and Calashes, not exceeding seven inches in length, to be charged with two-thirds of the above duties.						
Men's Boots, the dozen pairs	1	8	0	1	8	0
——— Shoes, the dozen pairs	0	14	0	0	14	0
Boys' Boots and Shoes, not exceeding seven inches in length, to be charged with two thirds of the above duties.						
Leather, viz.						
Boot Fronts not exceeding nine inches in height the dozen pairs	0	3	6	0	3	6
——— exceeding nine inches in height the dozen pairs	0	5	6	0	5	6
Leather cut into shapes, or any article made						

ARTICLES	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
Class XI. Manufactures of Leather—(*Continued*).						
Leather—(continued). of leather, or any manufacture whereof leather is the most valuable part, not otherwise enumerated or described, for every 100*l.* value	15	0	0	15	0	0
Gloves of Leather, viz.						
Habit Mitts, the dozen pairs	0	2	4	0	2	4
——— Gloves, the dozen pairs	0	3	6	0	3	6
Men's Gloves, the dozen pairs	0	3	6	0	3	6
Women's Gloves, or Mitts, the dozen pairs	0	4	6	0	4	6
Parchment, the doz sheets	0	6	0	0	6	0
Vellum . the skin	0	1	0	0	1	0
Class XII. Cotton, Hair, Linen, Wool, and Manufactures thereof.						
Cotton, Hair, Linen, Wool, &c., viz.						
Bandstring Twist, the dozen knots, each containing 32 yards	0	5	0	0	2	6
Candlewick . the cwt.	0	8	8	0	4	4
Cotton, Manufactures of, for every 100*l.* value	10	0	0	5	0	0
——— Yarn, for every 100*l.* value	10	0	0	5	0	0
——— Articles, or Manufactures of Cotton, wholly or in part made up, not otherwise charged with duty, for every 100*l.* value	20	0	0	10	0	0
Flax and Tow, or Codilla of Hemp or Flax, whether dressed or undressed, the cwt.	0	0	1	0	0	1
Flocks . the cwt.	0	5	0	0	2	6
Gauze of Thread, for every 100*l.* value	15	0	0	7	10	0
Hair, viz.						
Camel's Hair or Wool the lb.	0	0	1	Free.		
Cow, Ox, Bull, or Elk Hair . the cwt.	0	0	6	0	0	3
Goat's Hair (*See* Wool)						
Horse Hair . the cwt.	0	0	6	0	0	3
Not otherwise enumerated or described for every 100*l.* value	5	0	0	2	10	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
CLASS XII. COTTON, HAIR, LINEN, WOOL, AND MANUFACTURES THEREOF—(*Continued*).						
Hair—(continued).						
Manufactures of Hair or Goat's Wool, or of Hair or Goat's Wool and any other material, and articles of such manufacture wholly or in part made up, not particularly enumerated or otherwise charged with duty, for every 100*l.* value	15	0	0	7	10	0
Inkle, unwrought, the lb.	0	0	6	0	0	3
——, wrought . the lb.	0	1	0	0	0	6
Linen, or *Linen* and *Cotton*, viz.						
Cambrics and Lawns, commonly called French Lawns, the piece not exceeding eight yards in length, and not exceeding seven eighths of a yard in breadth, and so in proportion for any greater or less quantity:						
—— Plain, the piece	0	5	0	0	5	0
—— Bordered Handkerchiefs . the piece	0	5	0	0	5	0
Lawns of any other sort, not French, for every 100*l.* value	15	0	0	15	0	0
Lace Thread, for every 100*l.* value	12	10	0	12	10	0
—— made by the hand, commonly called Cushion or Pillow Lace, whether of Linen, Cotton, or Silken Thread, for every 100*l.* value	12	10	0	12	10	0
Damasks, the square yard	0	0	10	0	0	10
Damask Diaper, the square yard	0	0	5	0	0	5
Plain Linens and Diaper, not otherwise enumerated or described, and whether chequered or striped with dyed yarn or not, for every 100*l.* value	15	0	0	15	0	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
CLASS XII. COTTON, HAIR, LINEN, WOOL, AND MANUFACTURES THEREOF—(*Continued.*)						
Linen—(continued).						
Sails, for every 100*l.* value	15	0	0	15	0	0
—— in actual use of a British Ship, and fit and necessary for such Ship, and not otherwise disposed of .	Free.			Free.		
—— if and when otherwise disposed of, for every 100*l.* value	15	0	0	15	0	0
Manufactures of Linen, or of Linen mixed with Cotton or with Wool, not particularly enumerated or otherwise charged with duty, for every 100*l.* value	15	0	0	15	0	0
Thread, not otherwise enumerated or described, for every 100*l.* value	10	0	0	5	0	0
Wool, viz.						
Alpaca, and the Llama Tribe . the cwt.	0	2	6	0	2	6
Beaver . . the lb.	0	0	6	0	0	3
——— cut and combed the lb.	0	1	0	0	0	6
Coney . the lb.	0	0	1	0	0	1
Cotton, or Waste of Cotton Wool, the cwt.	0	2	11	0	0	4
Goats, or Hair, the cwt.	0	2	6	Free.		
Hares . . the lb.	0	0	1	Free.		
Sheep or Lambs Wool, viz.						
Not being of the value of 1*s.* the lb. thereof, the lb.	0	0	0½	Free.		
Being of the value of 1*s.* the lb. or upwards . the lb.	0	0	1	Free.		
Woollens, viz.						
Manufactures of Wool, not being Goats' Wool, or of Wool mixed with Cotton, not particularly enumerated or described, nor otherwise charged with duty, for every 100*l.* value	15	0	0	5	0	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
CLASS XII. COTTON, HAIR, LINEN, WOOL, AND MANUFACTURES THEREOF—(*Continued*).						
Woollens—(continued).						
Articles of Manufactures of Wool, not Goats' Wool or of Wool mixed with Cotton, wholly or in part made up, not otherwise charged with duty, for every 100*l.* value	20	0	0	10	0	0
Yarn, raw Linen, the cwt.	0	1	0	0	1	0
Worsted . the lb.	0	0	6	0	0	6
Camel or Mohair, the lb.	0	0	1	0	0	1
CLASS XIII. GLASS, EARTHENWARE, AND PORCELAIN.						
Beads and Bugles of Glass the lb.	0	0	3	0	0	3
Bottles of Earth or Stone, and empty, the dozen	0	0	2	0	0	2
Of Glass covered with Wicker, (not being Flint or Cut Glass,) or of Green or common Glass, the cwt.	0	4	0	0	4	0
——— and further, on account of the Excise Duty . the cwt.	0	7	0	0	7	0
Of Glass not otherwise enumerated or described . the cwt.	1	0	0	1	0	0
——— and further, on account of the Excise Duty . the cwt.	1	0	0	1	0	0
China or Porcelain Ware, viz.						
Plain, for every 100*l.* value	15	0	0	15	0	0
Painted, gilt, or ornamented, for every 100*l.* value	20	0	0	20	0	0
Earthenware, not otherwise enumerated or described, for every 100*l.* value	10	0	0	10	0	0
Enamel . the lb.	0	2	0	0	2	0
Glass, viz.						
Crown Glass, or any kind of Window Glass, not exceeding one ninth of an inch in thickness, and not						

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
CLASS XIII. GLASS, EARTHENWARE, AND PORCELAIN—(*Continued*).						
Glass—(continued).						
being Plate Glass or German Sheet Glass, the cwt.	1	10	0	1	10	0
——— and further, on account of the Excise Duty, the cwt.	5	3	0	5	3	0
Flint and Cut Glass, for every 100*l.* value	30	0	0	30	0	0
——— and further, on account of the Excise Duty, the cwt.	1	0	0	1	0	0
German Sheet Glass, White or coloured, not exceeding one ninth of an inch in thickness, and shades the cwt.	1	10	0	1	10	0
——— and further, on account of the Excise Duty, the cwt.	4	4	0	4	4	0
All Glass exceeding one ninth of an inch in thickness; all silvered or polished Glass, of whatever thickness, and Plate Glass, however small each Pane, Plate, or Sheet, superficial measure, viz.						
——— not containing more than 9 square feet, the square foot	0	4	0	0	4	0
——— containing more than 9 square feet, and not more than 14 square feet, the square foot	0	5	0	0	5	0
——— containing more than 14 square feet, and not more than 36 square feet, the square foot	0	6	0	0	6	0
——— containing more than 36 square feet, the square foot	0	7	0	0	7	0
Glass manufactures not otherwise enumerated or described, and old broken Glass fit only to be re-manufactured . the cwt.	1	0	0	1	0	0
——— and further, on account of the Excise Duty . the cwt.	1	0	0	1	0	[illegible]

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
CLASS XIII. GLASS, EARTHENWARE, AND PORCELAIN—(*Continued*).						
Paintings on *Glass*, for every 100*l.* value	5	0	0	5	0	0
——— and further, on account of the Excise Duty, the superficial foot	0	4	0	0	4	0
CLASS XIV. SILK, AND MANUFACTURES OF SILK.						
Silk, viz.						
Knubs or Husks of Silk, and waste Silk, the cwt.	0	1	0	0	0	6
Raw Silk . the lb.	0	0	1	0	0	1
Thrown Silk, not dyed, viz.						
——— Singles, the lb.	0	1	0	0	0	6
——— Tram . the lb.	0	1	0	0	0	6
——— Organzine and Crape Silk . the lb.	0	1	0	0	0	6
Thrown Silk, dyed, viz.						
Singles or Tram, the lb.	0	2	0	0	1	0
Organzine or Crape Silk . the lb.	0	2	0	0	1	0
Manufactures of Silk, or of Silk mixed with any other Material, the produce of Europe, viz.						
Silk or Satin, plain, the lb.	0	11	0		—	
——— or, and at the option of the officers of the Customs, for every 100*l.* value	25	0	0		—	
——— figured or brocaded . the lb.	0	15	0		—	
——— or, and at the option of the officers of the Customs, for every 100*l.* value	30	0	0		—	
Gauze, plain . the lb.	0	17	0		—	
——— or, and at the option of the officers of the Customs, for every 100*l.* value	30	0	0		—	
——— striped, figured or brocaded, the lb.	1	7	6		—	
——— or, and at the option of the officers of the Customs, for every 100*l.* value	30	0	0		—	
Crape, plain . the lb.	0	16	0		—	
——— or, and at the option of the officers of the Customs, for every 100*l.* value	30	0	0		—	

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
CLASS XIV. SILK, AND MANUFACTURES OF SILK—(*Continued*).						
Silk—(continued).						
Crape, figured, the lb.	0	18	0		—	
——— or, and at the option of the officers of the Customs, for every 100*l.* value	30	0	0		—	
Velvet, plain . the lb.	1	2	0		—	
——— or, and at the option of the officers of the Customs, for every 100*l.* value	30	0	0		—	
——— figured, the lb.	1	7	6		—	
——— or, and at the option of the officers of the Customs, for every 100*l.* value	30				—	
Ribbons, embossed, or figured with velvet, the lb.	0	17	0		—	
——— or, and at the option of the officers of the Customs, for every 100*l.* value	30	0	0		—	
——— and further, if mixed with Gold, Silver, or other Metal, in addition to the above rates, when the duty is not charged according to value, the lb.	0	10	0		—	
Fancy Silk Net, or Tricot . the lb.	1	4	0		—	
Plain Silk Lace or Net, called Tulle, the square yard	0	1	4		—	
Manufactures of Silk, or of Silk mixed with any other material, not particularly enumerated or otherwise charged with duty, for every 100*l.* value	30	0	0	5	0	0
Millinery of Silk, or of which the greater part of the materials is of silk, viz.						
Turbans or Caps, each	0	15	0	0	15	0
Hats or Bonnets, each	1	5	0	1	5	0
Dresses . each	2	10	0	2	10	0
——— or, and at the option of the Officers of the Customs, for every 100*l.* value	40	0	0	40	0	0
Manufactures of Silk, or of Silk and any						

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
Class XIV. Silk, and Manufactures of Silk—(*Continued*).						
Silk—(continued).						
other material and articles of the same, wholly or in part made up, not particularly enumerated or otherwise charged with duty for every 100*l.* value	30	0	0	30	0	0
Silkworm Gut, for every 100*l.* value	20	0	0	20	0	0
Class XV. Naval Stores.						
Bast Ropes, Twines, and *Strands* . the cwt.	0	5	0	0	2	6
Cables (not being Iron Cables), tarred or untarred . the cwt.	0	6	0	0	3	0
Not being Iron Cables, in actual use of a British ship, and being fit and necessary for such ship, and not, or until, otherwise disposed of	Free.			Free.		
If and when otherwise disposed of for every 100*l.* value	10	0	0	5	0	0
Coir Rope, Twine, and *Strands* . the cwt.	0	2	6	0	1	3
Cordage, tarred or untarred (standing or running rigging in use excepted) the cwt.	0	6	0	0	3	0
In actual use of a British ship, and being fit and necessary for such ship, and not or until otherwise disposed of	Free.			Free.		
If, and when otherwise disposed of, for every 100*l.* value	5	0	0	2	10	0
Hemp, dressed . the cwt.	0	4	0	0	2	0
Rough or undressed, or any other vegetable substance of the nature and quality of undressed Hemp, and applicable to the same purposes the cwt.	0	0	1	0	0	1
Oakum the cwt.	0	0	1	0	0	1

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
Class XV. Naval Stores—(*Continued*).						
Pitch . . the cwt.	0	0	6	0	0	1
Rosin . . the cwt.	0	2	0	0	1	0
Ships to be broken up with their tackle, apparel, and furniture (except sails), viz.						
Foreign ships or vessels, for every 100*l.* value	25	0	0	25	0	0
Foreign ships broken up, for every 100*l.* value	10	0	0	10	0	0
British ships or vessels entitled to be registered as such, and not having been built in the United Kingdom	..			Free.		
Tar, the Last, containing 12 barrels, each barrel not exceeding 31½ gallons . . .	0	2	6	0	0	6
Turpentine, viz.						
Not being of greater value than 9*s.* per cwt. . the cwt.	0	0	1	0	0	1
From 9*s.* to 15*s.* value per cwt. . the cwt.	0	1	0	0	0	3
Above 15*s.* value per cwt. . the cwt.	0	5	0	0	2	6
Twine . . the cwt.	0	10	0	0	5	0
Yarn, Cable Yarn the cwt.	0	6	0	0	3	0
Class XVI. Stones, Bricks, and Tiles.						
Bricks or *Clinkers* (Dutch) the 1000	0	10	0	0	5	0
Other sorts . the 1000	0	15	0	0	7	6
Chalk, unmanufactured, and not otherwise enumerated, for every 100*l.* value	5	0	0	2	10	0
Prepared or manufactured, and not otherwise enumerated, for every 100*l.* value	10	0	0	5	0	0
Gypsum . the ton	1	11	8	0	1	3
Plaister of Paris, the ton	1	0	0	1	0	0
Stone, viz.						
Stone in lumps, not in any manner hewn; Slate, and Marble, in rough blocks or slabs; Limestone; Flint Stones; Felspar and						

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
Class XVI. Stones, Bricks, and Tiles—(*Continued*).						
Stone—(continued).						
Stones for Potters use; Pebble Stones; Stone to be used for the purpose of Lithography . . .	Free			Free.		
Stone, in Blocks, shaped or rough scapled the ton	0	2	0	0	0	6
Stone and Slate, hewn the ton	0	10	0	0	1	0
Marble, sawn into Slabs, or otherwise manufactured . the cwt.	0	3	0	0	1	6
Tiles, for every 100*l.* value	10	0	0	5	0	0
Class XVII. Coffee, Cocoa, Tea, and Tobacco.						
Coffee . . the lb.	0	0	8	0	0	4
Cocoa . . the lb.	0	0	4	0	0	1
Husks and Shells, the lb.	0	0	1	0	0	0½
Cocoa Paste and *Chocolate* . the lb.	0	0	6	0	0	2
Tea . . the lb.	0	2	1	0	2	1
Tobacco, viz.						
Unmanufactured, the lb.	0	3	0	0	3	0
Snuff . the lb.	0	6	0	0	6	0
Manufactured, or Cigars . the lb.	0	9	0	0	9	0
Stalks and Flour of .	Prohibited			Prohibited		
(Manufactured in the United Kingdom, at or within two miles of any port into which Tobacco may be imported, made into Shag, Roll, or Carrot Tobacco, drawback upon exportation or shipment as Stores, the lb., 2*s.* 7½*d.*)						
Class XVIII. Spirits and Wines.						
Spirits or strong Waters, of all sorts, viz.						
For every gallon of such Spirits or strong Waters of any strength,						

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
Class XVIII. Spirits and Wines—(*Continued*).						
Spirits, &c.—(continued).						
not exceeding the strength of proof by Syke's Hydrometer, and so in proportion for any greater or less strength than the strength of proof, and for any greater or less quantity than a gallon, viz.						
Being Spirits or strong Waters, not the produce of any British Possession, and not being sweetened Spirits, or Spirits mixed with any article, so that the degree of strength thereof cannot be exactly ascertained by such Hydrometer, the gallon	1	2	6	—		
Spirits or strong Waters, the produce of any British Possessions in America, not being sweetened Spirits, or Spirits so mixed as aforesaid the gallon	.		.	0	9	0
Rum, the produce of any British Possession within the limits of the East India Company's Charter, not being sweetened Spirits, or Spirits so mixed as aforesaid, in regard to which the conditions of the act 4 Vict. c. 8, have or shall have been fulfilled, the gallon	.		.	0	9	0
Rum shrub, however sweetened, the produce of and imported from such Possessions, in regard to which the conditions of the act 4 Vict. c. 8, have or shall have been fulfilled, or the produce of and imported from						

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.	RATES OF DUTY. Of and from British Possessions.
	£ s. d.	£ s. d.
Class XVIII. Spirits and Wines—(*Continued*).		
Spirits, &c.—(continued). any British Possession in America - -	. .	0 9 0
Spirits or strong Waters, the produce of any British Possession within the limits of the East India Company's Charter, except rum in regard to which the conditions of the act 4 Vict. c. 8, have or shall have been fulfilled, not being sweetened Spirits, or Spirits so mixed as aforesaid, the gallon	. .	0 15 0
Spirits, Cordials, or strong Waters, not being the produce of any British Possession in America, nor of any British possession within the limits of the East India Company's Charter, in regard to which the conditions of the act 4 Vict. c. 8, have or shall have been fulfilled, sweetened or mixed with any article, so that the degree of strength thereof cannot be exactly ascertained by Syke's Hydrometer, and perfumed Spirits to be used as Perfumery only, the gallon	1 10 0	1 10 0
Cordials, or strong Waters, except Rum Shrub, being the produce of any British Possession in America, or of any British Possession qualified as aforesaid, sweetened or mixed with any article as aforesaid, the gallon	. .	1 0 0
Liqueurs, the produce of and imported from British Possessions in America, or of and from any British Possession qualified as aforesaid, not being of greater strength than the strength of proof by Syke's Hydrometer, the gallon	. .	0 9 0
being of greater strength by Syke's Hydrometer, except Rum Shrub, the gallon	. .	0 13 6
Wine, viz. (*a*) The produce of the Cape of Good Hope, or the Territories or Dependencies thereof, and imported directly from thence, the gallon	. .	0 2 9
French . the gallon	0 5 6	—
Canary . the gallon	0 5 6	—
Madeira . the gallon	0 5 6	—
Portugal . the gallon	0 5 6	—
Rhenish . the gallon	0 5 6	—
Spanish . the gallon	0 5 6	—
Other sorts, the gallon	0 5 6	—
(The full Duties on Wine are drawn back upon re-exportation or shipment as Stores.)		
Lees, subject to the same duty as Wine, but no drawback is allowed on the Lees of Wine exported.		
Class XIX. Miscellaneous.		
Agates or *Cornelians*, for every 100*l.* value	5 0 0	5 0 0
set, for every 100*l.* value	15 0 0	15 0 0
Barbadoes Tar . the cwt.	0 2 6	0 2 6

(*a*) A duty of 4*s.* per tun is payable on all Wines imported into the port of London, by virtue of 6 & 7 W. & M. c. 10, continued by 3 & 4 Vict. c. 131.

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
CLASS XIX. MISCELLANEOUS—(*Continued*).						
Basket Rods, peeled, not exceeding three feet in circumference at the band, the bundle	0	0	6	0	0	6
Unpeeled . the bundle	0	0	3	0	0	3
Baskets, for every 100*l.* value	10	0	0	10	0	0
Beads, Arango, for every 100*l.* value	15	0	0	15	0	0
Coral, for every 100*l.* value	15	0	0	15	0	0
Jet, for every 100*l.* value	15	0	0	15	0	0
not otherwise enumerated or described, for every 100*l.* value	15	0	0	15	0	0
Birds, viz. Singing Birds the dozen	0	8	0	0	8	0
Blacking . the cwt.	1	0	0	1	0	0
Bladders . the dozen	0	0	3	0	0	3
Books, viz.						
Being of Editions printed prior to the year 1801, bound or unbound . the cwt.	1	0	0	1	0	0
Being of Editions printed in or since the year 1801, bound or unbound . the cwt.	5	0	0	5	0	0
Being of Editions in the Foreign Living Languages, printed in or since the year 1801, bound or unbound the cwt.	2	10	0	2	10	0
Bones of Cattle and other Animals, and of Fish (except Whale Fins), whether burnt or not, or as Animal Charcoal the ton	0	0	6	0	0	6
Boxes of all sorts, excepting those made wholly or partly of Glass, on which the proper Glass Duty will be levied, for every 100*l.* value	10	0	0	5	0	0
Bristles, rough, and in in the tufts, and not in any way sorted the cwt.	0	2	6	0	2	6
In any way sorted, or arranged in colours, and not entirely						

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
CLASS XIX. MISCELLANEOUS—(*Continued*).						
Bristles—(continued). rough and in the tufts . the lb.	0	0	3	0	0	3
Brocade of Gold or Silver for every 100*l.* value	20	0	0	20	0	0
Bullrushes . the ton	0	10	0	0	10	0
Candles :—						
Spermaceti . the lb.	0	0	6	0	0	6
Stearine . the lb.	0	0	2½	0	0	2½
Tallow . the cwt.	0	10	0	0	10	0
Wax . . the lb.	0	0	4	0	0	4
Canes :—						
Bamboo . the 1,000	0	0	6	0	0	6
Rattans, not ground the 1,000	0	5	0	0	5	0
Reed Canes, the 1,000	0	5	0	0	5	0
Walking Canes or Sticks, mounted, painted, or otherwise ornamented, for every 100*l.* value	20	0	0	20	0	0
or Sticks enumerated, the 1,000	0	5	0	0	5	0
Cards, viz. Playing Cards, the dozen packs	4	0	0	4	0	0
Carriages of all sorts, for every 100*l.* value	20	0	0	20	0	0
Casks (empty) for every 100*l.* value	25	0	0	25	0	0
Casts of Busts, Statues, or Figures, the cwt.	0	2	6	0	2	6
Catlings, the gross, containing 12 dozen knots	0	3	0	0	3	0
Chip of Willow for platting . the cwt.	0	0	1	0	0	1
Clocks, for every 100*l.* value	20	0	0	20	0	0
Clocks or *Watches*, of any metal, impressed with any mark or stamp, appearing to be or to represent any legal British Assay Mark or Stamp, or purporting, by any mark or appearance, to be of the manufacture of the United Kingdom	Prohibited			Prohibited		
Cork (from and after July 5, 1843), . the ton	0	1	0	0	1	0
Corks, ready made, (from and after July 5, 1843) . the lb.	0	0	8	0	0	8
squared for rounding, the cwt.	0	16	0	0	16	0
Fishermen's, the cwt.	0	2	0	0	2	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class XIX. Miscellaneous—(*Continued*).						
Coral, viz.						
in Fragments, the lb.	0	0	2	0	0	1
whole, polished, the lb.	0	12	0	0	0	6
unpolished . the lb.	0	5	6	0	0	6
Crayons, for every 100*l.* value	15	0	0	15	0	0
Diamonds . . .	Free.			Free.		
Dice . . the pair	1	6	2	1	6	2
Down . . the lb.	0	1	3	0	0	7½
Embroidery and Needle-work, for every 100*l.* value	20	0	0	20	0	0
Feathers for Beds, in Beds, or otherwise, the cwt	1	0	0	0	10	0
Ostrich, dressed, the lb.	1	10	0	1	10	0
———, undressed the lb.	0	0	1	0	0	1
not otherwise enumerated or described, viz. dressed, for every 100*l.* value	10	0	0	10	0	0
undressed, for every 100*l.* value	5	0	0	5	0	0
Paddy Bird . the lb.	0	1	0	0	1	0
Flower Roots, for every 100*l.* value	5	0	0	5	0	0
Flowers, Artificial, not made of Silk, for every 100*l.* value	25	0	0	25	0	0
Frames, for Pictures, Prints, or Drawings, for every 100*l.* value	10	0	0	10	0	0
Garnets . the lb.	0	5	0	0	5	0
cut . . the lb.	0	15	0	0	15	0
Grease . . the cwt.	0	1	8	0	0	3
Greaves, for Dogs, the cwt.	0	2	0	0	2	0
Gunpowder . the cwt.	1	0	0	1	0	0
Gun-stocks in the rough, of Walnut or other Woods . the cwt.	0	0	6	0	0	6
Guano . . the tun	0	1	0	0	1	0
Hair, Human . the lb.	0	1	0	0	1	0
Harp Strings or Lute Strings, silvered, for every 100*l.* value	20	0	0	20	0	0
Hats or Bonnets, viz.						
of Chip . the lb.	0	5	0	0	5	0
Bast, Cane, or Horse-hair Hats or Bonnets, each Hat or Bonnet not exceeding 22 Inches in Diameter, the dozen	0	10	0	0	10	0
each Hat or Bonnet exceeding 22 Inches in Diameter, the doz. .	0	15	0	0	15	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries. £	s.	d.	Of and from British Possessions. £	s.	d.
Class XIX. Miscellaneous—(*Continued*).						
Hats—(continued).						
Straw Hats or Bonnets, the lb.	0	8	6	0	8	6
Felt, Hair, Wool, or Beaver . each	0	2	6	0	2	6
made of Silk, or Silk Shag, laid upon Felt, Linen, or other Material . each	0	3	6	0	3	6
Heath, for Brushes, the cwt.	0	5	0	0	5	0
Hones . . the 100	1	0	0	1	0	0
Hoofs of Cattle, for every 100*l.* value	1	0	0	1	0	0
Horns, Horn Tips, and Pieces of Horn, the tun	0	1	0	0	1	0
Horse Grease. *See* Oil, "Animal."						
Japanned or Lacquered Ware, for every 100*l.* value	15	0	0	15	0	0
Jet . . . the lb.	0	0	1	0	0	1
Jewels, Emeralds, Rubies, and all other precious Stones (except Diamonds and Pearls), unset, for every 100*l.* value	0	10	0	0	10	0
set, for every 100*l* value	10	0	0	10	0	0
Ink for Printers, the cwt.	0	10	0	0	10	0
Lamp Black . the cwt.	1	0	0	1	0	0
Magna Græcia Ware, for every 100*l.* value	5	0	0	5	0	0
Manures not otherwise enumerated or charged with Duty . the ton	0	0	6	0	0	6
Manuscripts . the lb.	0	0	2	0	0	2
Maps or *Charts*, or Parts thereof, plain or coloured . each	0	0	1	0	0	1
Mats and *Matting*, for every 100*l.* value	5	0	0	2	10	0
Mattresses, for every 100*l.* value	10	0	0	10	0	0
Mill Boards . the cwt.	1	10	0	1	10	0
Models of Cork or Wood, for every 100*l.* value	5	0	0	5	0	0
Mother-of-Pearl Shells, for every 100*l.* value	5	0	0	5	0	0
Musical Instruments, for every 100*l.* value	15	0	0	15	0	0
Mustard Flour, the cwt.	0	12	0	0	12	0
Palmetto Thatch, the cwt.	.		.	0	0	1

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
Class XIX. Miscellaneous—(*Continued*).						
Palmetto Thatch—(continued).						
Manufactures of ditto, for every 100*l.* value	.		.	5	0	0
Paper, viz.						
Brown, made of old rope or cordage only, without separating or extracting the pitch or tar therefrom, and without any mixture of other materials therewith . the lb.	0	0	3	0	0	3
Printed, painted, or stained Paper, or Paper Hangings, or Flock Paper, the square yard	0	1	0	0	1	0
Waste, unless printed on in the English Language, or Paper of any other sort not particularly enumerated or described, nor otherwise charged with duty, the lb.	0	0	4½	0	0	4½
Printed on in the English language . .	Prohibited			Prohibited.		
Paste Boards . the cwt.	1	10	0	1	10	0
Pencils, for every 100*l.* value	15	0	0	15	0	0
Of Slate, for every 100*l.* value	15	0	0	15	0	0
Pens, for every 100*l.* value	15	0	0	15	0	0
Percussion Caps, the 1000	0	0	4	0	0	4
Phosphorus, for every 100*l.* value	10	0	0	10	0	0
Pictures . . each	0	1	0	0	1	0
And further, the square foot	0	1	0	0	1	0
Above 200 square feet each	10	0	0	10	0	0
Plants, Shrubs, and *Trees* alive . . .	Free.			Free.		
Platting or other Manufactures to be used in, or proper for, making Hats or Bonnets, viz.						
——— of Bast, Cane, or Horsehair . the lb.	0	10	0	0	10	0
——— of Chip, the lb.	0	2	6	0	2	6
——— of Straw, the lb.	0	7	6	0	7	6
Pots, Melting Pots for Goldsmiths . the 100	0	3	2	0	3	2

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			Of and from British Possessions.		
	£	s.	d.	£	s.	d.
Class XIX. Miscellaneous—(*Continued*).						
Pots—(continued).						
—— of Stone, for every 100*l.* value	20	0	0	20	0	0
Powder, viz.						
Hair Powder, the cwt.	1	0	0	1	0	0
Perfumed . the cwt.	1	0	0	1	0	0
Not otherwise enumerated or described, that will serve for the same Uses as Starch, the cwt.	0	10	0	0	10	0
Prints and Drawings, plain or coloured, single, each	0	0	1	0	0	1
——— bound or sewn, the dozen	0	0	3	0	0	3
Quills, Goose, the 1000	0	0	6	0	0	3
——— Swan, the 1000	0	3	0	0	1	6
Rags, viz.						
Old Woollen Rags, per ton	0	0	6	0	0	6
Old Rags, old Ropes or Junk, or old Fishing Nets, fit only for making Paper or Pasteboard, per ton	0	0	6	0	0	6
Pulp of Rags, per ton	0	5	0	0	5	0
Salt	Free.			Free.		
Scaleboards . the cwt.	1	10	0	1	10	0
Soap, hard . the cwt.	1	10	0	1	0	0
——— soft . the cwt.	1	0	0	0	15	0
——— Naples . the cwt.	2	16	0	2	16	0
Spa Ware, for every 100*l.* value	15	0	0	15	0	0
Spermaceti, fine, for every 100*l.* value	25	0	0	25	0	0
Sponge . the lb.	0	0	6	0	0	1
Starch . the cwt.	0	10	0	0	5	0
——— Gum of, torrified or calcined, commonly called British Gum, the cwt.	0	15	0	0	15	0
Straw or Grass, for platting . the cwt.	0	0	1	0	0	1
Stavesacre . the cwt.	0	4	0	0	4	0
Sulphur Impressions, for every 100*l.* value	5	0	0	5	0	0
Tallow . the cwt.	0	3	2	0	0	3
Tarras . the bushel	0	1	3	0	1	3
Teasles . the 1000	0	0	3	0	0	3
Teeth, Elephants', Sea Cow, Sea Horse, or Sea Morse . the cwt.	0	1	0	0	1	0
Telescopes, for every 100*l.* value	15	0	0	15	0	0
Tobacco Pipes of Clay, for every 100*l.* value	15	0	0	15	0	0

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries.			RATES OF DUTY. Of and from British Possessions.		
CLASS XIX. MISCELLANEOUS—(*Continued*).	£	s.	d.	£	s.	d.
Tortoiseshell or *Turtle-shell*, unmanufactured the lb.	0	1	0	0	0	1
Toys, excepting Toy and Hand Mirrors, on which the Plate Glass Duty will be levied, for every 100*l.* value	10	0	0	10	0	0
Turnery, not otherwise described, for every 100*l.* value	15	0	0	15	0	0
Vases, ancient, not of Stone or Marble, for every 100*l.* value	1	0	0	1	0	0
Wafers . the lb.	0	0	3	0	0	3
Washing Balls, the lb.	0	0	6	0	0	6
Watches of Gold or Silver, or other Metal, for every 100*l.* value	10	0	0	10	0	0
Water, viz., Mineral Water . the gallon	0	0	1	0	0	1
Whipcord . the lb.	0	0	6	0	0	6
Whale Fins, British taking, and imported direct from the Fishery, or from any British Possession, in a British ship . the ton	.	.		1	0	0
Otherwise taken (from						

ARTICLES.	RATES OF DUTY. Of or from Foreign Countries			RATES OF DUTY. Of and from British Possessions.		
CLASS XIX. MISCELLANEOUS—(*Continued*).	£	s.	d.	£	s.	d.
WhaleFins—(continued). and after July 5, 1843), for every 100*l.* value	20	0	0	20	0	0
Goods, Wares and Merchandize, being either in part or wholly manufactured, and not being enumerated or described, nor otherwise charged with Duty, and not prohibited to be imported into or used in Great Britain or Ireland, for every 100*l.* value	20	0	0	20	0	0
Goods, Wares, and Merchandize, not being either in part or wholly manufactured, and not being enumerated or described, nor otherwise charged with Duty, and not prohibited to be imported into or used in Great Britain or Ireland, for every 100*l.* value	5	0	0	5	0	0

TABLE (B).

DUTIES *of* CUSTOMS *payable on* GOODS, WARES, *and* MERCHANDIZE, *being the* GROWTH, PRODUCE, *or* MANUFACTURE *of the* UNITED KINGDOM, *exported from the* UNITED KINGDOM *to* FOREIGN COUNTRIES.

ARTICLES.	RATE OF DUTY. £	s.	d.
Coal, Culm, or Cinders in a Foreign Ship . . . . . the ton	0	4	0
Coal, in a British Ship, viz.			
—— Not being Small Coal . . . . . the ton	0	2	0
—— Small Coal, that is to say, Coals which shall have been screened through a riddle or screen, the bars of which are not in any part thereof more than five-eighth parts of an inch asunder, and Culm . . . . . the ton.	0	1	0
Clay and China Stone . . . . . the cwt.	0	0	3
Cement, Stone, and Flint (except for ballast), ground and unground . the cwt.	0	0	6
Wools and Skins . . . . . the cwt.	0	1	0
Manufactures, or pretended Manufactures, slightly wrought up, so as that the same may be reduced to and made use of as Wool again; Mattresses or Beds stuffed with combed Wool or Wool fit for combing or carding . . . the cwt.	0	1	0

For the Customs' laws relating to the trade of the Isle of Man our readers are referred to the last consolidating act; viz. the 3 & 4 Will. IV. c. 60, intituled, "*An Act for regulating the Trade of the Isle of Man.*"

Regulation of trade of the Isle of Man.

By the 5 & 6 Vict. c. 47, s. 46, "All manufactures of the islands of *Guernsey, Jersey, Alderney, Sark,* or *Man,* made of materials of foreign origin or produce, or of materials liable to duty upon importation into the United Kingdom, and upon which no such duty has been paid, or upon which the drawback of such duty has been allowed in the United Kingdom, except manufactures of linen and cotton made in, and imported from the Isle of Man, shall, for the purposes of duty, be deemed and taken to be the produce of and imported from a foreign country."

Manufactures of the Channel Islands to be deemed of foreign manufacture.

V. The Practice and Proceedings before Justices for Penalties, &c. incurred under Acts relative to the Customs.

V. *The practice and proceedings before magistrates, &c.*

[3 & 4 Will. IV. c. 53.]

1. *Within what time Prosecutions to be commenced—Venue,* 599.
2. *By whom Information, &c. to be instituted,* ib.
3. *Against whom,* 600.
4. *Before whom,* ib.
5. *The Information and Requisites,* 601.
6. *Of the Process upon same,* ib.
7. *Of the Apprehension, Appearance, and Default,* 602.
8. *Proceedings on hearing Informations,* ib.
9. *Form and Requisites of the Conviction,* 605.
10. *Of staying Proceedings by Nolle Prosequi,* 607.
11. *Of the Proceedings on Execution,* 608.
12. *Of Appeals, Affidavit, and Petition,* ib.
13. *Of the Removal by Habeas Corpus and Certiorari,* 609.
14. *Of the Liabilities and Indemnity of Magistrates and Officers,* 610.

(1). Within what time Prosecutions to be commenced—Venue.

1. Limitation of ing for prosecuting for offences.

The 3 & 4 Will. IV. c. 53, s. 120, directs that all suits, indictments, or informations exhibited for any offence against the Customs in courts of record, shall be within three years after the date of the offence committed.

Venue.

And by s. 122, any such indictment or information shall and may be inquired of, examined, tried, and determined, in any county of England, Scotland and Ireland where the offence is committed, in such manner and form as if the offence had been committed in the said county where the said indictment or information shall be tried.

If the prosecution be by *information before one or more justices,* the same must be exhibited within six months after the date of the offence, (s. 120); or in case of an escape from custody, at *any time* afterwards, (s. 121). The months are lunar, calculated exclusive of the day of the offence (*a*). If the information be within the time, that suffices, though the conviction be afterwards (*b*). (See *ante,* p. 568).

(2). By whom the Information, &c. is to be instituted.

2. Who to be the prosecutor.

By 3 & 4 Will. IV. c. 53, s. 75 (*ante,* p. 556), all penalties and forfeitures incurred or imposed by the Customs' laws shall be sued for, prosecuted, and recovered in the name of the attorney-general, or of an officer or officers of Customs, except (s. 112) in cases of persons detained and carried before two or more justices (*c*), unless such indictment shall be preferred under the direction of the commissioners of Customs or

(*a*) *R.* v. *Bass,* 5 *Term R.* 251; *Crook* v. *M'Tavish,* 1 *Bing.* 307.

(*b*) *R.* v. *Barrett, Salk.* 383.

(*c*) As to Isle of Man, see 1 & 2 Vict. c. 113, s. 9.

(2). *Who to be the prosecutor.*

Excise. Sect. 113 authorizes the attorney-general to enter a *nolle prosequi* in certain cases.

And by the 4 & 5 Will. IV. c. 51, s. 28, offences against the Customs laws may be sued for by order of commissioners of Excise, and in the name of officers of Excise.

If an officer of the Customs, or any other person whatsoever duly employed for the prevention of smuggling, be guilty of collusion, he forfeits 500*l.*, and is to be incapable of serving his Majesty. (Sect. 33; *ante*, p. 545).

The form of information prescribed in the act 3 & 4 Will. IV. c. 53, and given in the schedule, includes these words: "A. B., officer of Customs, *who is directed by the commissioners of His Majesty's Customs to prefer this information* gives," &c.

By the schedule of the amending act, viz. the 4 Will. IV. c. 13, however, the above words printed in italics are omitted in the form there given for an information; and as that act (see pp. 549 and 558) repealed so much of the former, as imposes certain pecuniary penalties for any of the offences in the 4 Will. IV. c. 13, mentioned, all informations for such latter penalties must now follow the amended form. (See Schedule, *ante*, p. 570).

(3). Against whom an Information, &c. may be laid.

3 Against whom.

Neither infancy nor coverture (s. 83, *ante*, p. 560; and *see* 4 Will. IV. c. 13, s. 5, *ante*, p. 558) constitutes any bar to a prosecution for a penalty under the Custom laws (*a*). Nor is infancy any defence to proceedings on a recognizance entered into by an infant, even against himself, still less his sureties.

Neither a son nor a servant is excusable for committing an offence by the command or even coercion of his father or master (*b*).

And in general a master is responsible for the acts of his servants, though done without his privity or knowledge (*c*). But see 3 & 4 Will. IV. c. 52, s. 134, *ante*, p. 533, where power is given to the commissioners of Customs to remit penalty against masters and owners of ships where they personally are innocent of the offence.

And other acts provide for the punishment of such servants (*d*).

Partners also are respectively liable for the misconduct of each other in their joint trade, and may be proceeded against jointly or separately (*e*).

(4). Before whom the Information, &c. is to be laid.

4. Before whom.

By the 3 & 4 Will. IV. c. 53, s. 75, *ante*, p. 556, penalties and forfeitures for offences against the Customs are to be recovered by *action of debt*, &c. in the *superior* courts, or by information before any *two or more justices* in the United Kingdom. Or, by sect. 78, the *information* may be before *one* justice, who may issue his summons. (*Ante*, p. 557).

And offences against these acts, committed on the *high seas*, are to be deemed to have been committed where the offender was "taken, brought or carried," and local and county justices have a concurrent jurisdiction. (See *Re Peerless*, 1 Q. B. Rep. 143, *ante*, p. 549, n. (*b*); and s. 77 and notes, p. 556).

And where the attendance of two magistrates of the county in which the offence was committed cannot be conveniently had, a magistrate of the adjoining county may act with a magistrate of the proper county (sect. 89, *ante*, p. 560).

(*a*) *R.* v. *Crofts*, 2 *Stra.* 1120; 4 *Black. Com.* 308; 2 *B. & P.* 93, 530; 8 *T. R.* 545.

(*b*) *Hawk. P. C.* book 1, s. 14.

(*c*) *Parker's Rep.* 227; *The King* v. *Dixon*, 3 *M. & S.* 11.

(*d*) See the Malt Acts.

(*e*) *Bunb.* 223; *Com. Rep.* 616; 5 *Burr.* 2686; 5 *T. R.* 649.

Justices are bound to hear an information duly lodged, and either to dismiss it or determine it, and may be compelled to do so (*a*). (5). *The information.*

(5). Of the Information and Requisites.

Certain goods, the produce of Asia, being admissible to Customs' duty for use in the United Kingdom from Asia *direct*, in a *British ship* were imported into this country *from Holland*, contrary to the *Navigation Act* 2 & 3 Will. IV. c. 53, s. 3, *post, tit.* "*Ships.*" An information was filed in the Exchequer on s. 44 of 3 & 4 Will. IV. c. 53 (the Smuggling Prevention Act, *ante*, p. 548) against the owner of the goods for the *treble value* of them, charging him with being concerned in the unshipping of goods prohibited to be imported into the United Kingdom, and alleging that the goods were "then and there liable to the duties of Customs, the said duties of Customs for the same not having been first paid or secured." It was held that the information was good, the allegation in question being framed in pursuance of the imperative terms of 3 & 4 Will. IV. c. 58, s. 30 (*b*). 5. The form of information in Exchequer on 3 & 4 Will. 4, c. 53, s. 44.

It would seem, that the information must be in *writing;* and as the form of the conviction (*ante*, pp. 559, 560), directs that the same shall describe the offence *as in the information*, such information itself must very accurately and correctly state the offence (*c*). It was held that where an information of seizure lays the number of things seized under a videlicet, the allegation is material, and that the proofs, verdict, and judgment, are limited to the number so laid, or a number within it; and such an information requires an averment of the quantity of things seized, and would be bad without it (*d*). Information before justices of peace.

The information must state the offence with certainty, and not in the alternative; and therefore an information, stating that defendant imported *or* caused to be imported foreign silks, was held bad (*e*).

It should seem that though usual, it is not necessary to conclude against the form of the statute, where the offence is minutely described, so as to bring the case within the terms of the act; at least, that this is so in the case of *a revenue information in the court of Exchequer* (*g*).

And the 3 & 4 Will. IV. c. 53, s. 90, directs any justice or justices of the peace to *amend* any information, conviction, or warrant of commitment, for any offence under any act for the prevention of smuggling. (*Ante*, p. 561; and see p. 558, ss. 6 & 7 of the 4 Will. IV. c. 13).

(6). Of the Process upon the Information, &c.

When the proceeding is in the *superior* court, the 3 & 4 Will. IV. c. 53, ss. 95, 96, 97, 98, and 99, (*ante*, p. 562.), directed that a *capias* should issue as the first process, specifying the amount of the penalty, and bail was to be given by the defendant for his appearance, and upon appearance bail was to be given for payment of the penalties: and if defendant should be taken to prison, service of a copy of the information on the gaoler is sufficient; and if he neglected to appear for one term, judgment by default was to be entered; and execution upon a judgment after verdict was to lie against person, as well as real and personal estate. If the defendant were not worth 5*l.* he might defend *in formâ pauperis.* The sheriff was to grant a warrant on writ of *capias*, indorsed by one of the solicitors for the Customs, and be indemnified from 6. The process, summons, &c.

(*a*) *R.* v. *Todd*, 1 *Stra.* 530.

(*b*) *The Attorney-General* v. *Greaves*, 2 *Crom. M. & R.* 609; 1 *Tyrw. & Gr.* 48.

(*c*) See the cases, *post*, 605, under the head of "*Conviction*," and 3 *D. & R.* 461; 8 *B. & Cress.* 114.

(*d*) *The Attorney-General* v. *Jeffery*, *M'Clel. Rep.* 270.

(*e*) *R.* v. *Morley*, 1 *Young & Jer.* 221; and *see Ex parte Pain*, 5 *B. & Cress.* 251; 7 *D. & R.* 678.

(*g*) *Attorney-General* v. *Rattenbury*, 9 *Price*, 397.

(6). *The process, summons, &c.*

escapes in cases where a warrant has been granted at request of the solicitor for the Customs.

Summons.

If the proceeding is to be before *justices*, they should issue their *summons* to the party accused, and which should be directed to the party, and should contain the substance of the charge, and fix a day and place for the appearance, allowing a sufficient time for the appearance of the party and his witnesses, and should be signed by the justices. But by the 3 & 4 Will. 4, c. 53, s. 78, *one* justice may receive the information, and issue the summons to appear before any *two* justices. (*Ante*, 557).

Service of the summons

The 3 & 4 Will. IV. c. 53, s. 84, provides that it shall be deemed a good service of the summons if the same be left at the house or usual place of residence of the party, or on board any ship to which he belongs, and directed to such party (*a*).

But notwithstanding this provision, the summons should, in all cases, *if possible*, be personally served a reasonable time before the time appointed for hearing the information (*b*); and unless the defendant appear, the summoning officer must swear to the due service of the summons before the two justices can proceed, and though appearance may cure the defect in summons, yet if the defendant shew that he was too recently summoned, he may pray, and ought to have granted, a postponement of the time of hearing.

(7). Of the Apprehension, Appearance, or Default.

7. Of the apprehension, appearance, or default, &c.

For offences against the Customs amounting to felony, (*ante*, p. 552), the parties may be apprehended as in other similar cases.

But no express power is given to justices to arrest or apprehend a party before conviction, on an information for penalties, but only to *summon* him, and, in default of his appearance, to proceed to the examination of the matter, and, upon due proof of the offence, to give judgment ex parte.

The 3 & 4 Will. IV. c. 53, s. 51, (*ante*, p. 551), however, authorizes one justice, either before or after information, to detain, for a reasonable time, any person who has been detained by any officer, and taken before any justice, for any offence against any act for the prevention of smuggling. But a magistrate is liable in trespass if he commit a party, even *charged* with felony, for re-examination for an unreasonable time (*c*).

(8). Proceedings on Hearing Informations, &c.

8. Proceedings on hearing, &c.

If the defendant *does not appear*, the *due service* of the summons must be proved on oath; and though the party does not attend, still the justices are bound to observe the same formalities in inquiring into and deciding upon the merits of the case, as if he actually appeared and made defence (*d*).

Non-appearance.

Appearance, confession, &c.

Appearance, as we have seen, cures all irregularities in the mode of summoning. The defendant has at least a right to have his attorney present before the justices, if not a right to have his defence conducted by such attorney; and if the magistrates direct the attorney to be removed from the justice-room, an action of trespass against them may be supported (*e*).

Upon the appearance of the party, he must first plead to the information. If the defendant confess the charge, the justices have nothing more to do than pass judgment and impose the penalty, or take

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(*a*) *Ante*, 560; and as to the service of summonses in general, see *R.* v. *Hall*, 6 *D. & R.* 84.

(*b*) *R.* v. *Hall*, 6 *Dowl. & R.* 84.

(*c*) *Davis* v. *Capper*, 10 *Bar. & C.* 28.

(*d*) 10 *Mod.* 381; *R.* v. *Warnford*, 5 *Dowl. & R.* 489; *Paley on Convictions*, 26, 2nd ed. See however *Cave* v. *Mountain*, 1 *Man. & Gr.* 257.

(*e*) *Daubeney* v. *Cooper*, 10 *B. & Cres.* 237.

such other course as the statute points out. Care, however, should be taken that the party clearly understands the charge with reference to which his confession is to be taken. The confession of the defendant will not supply the want of any due formalities in the information.

(8). *Proceedings on hearing, &c.*

If the defendant deny the charge, and require time to make his defence, he should be allowed a reasonable interval for that purpose.

The defendant, it seems, might appear and defend by counsel or attorney, or by both (*a*).

After appearance, and no time is prayed, the next step is to substantiate the information by testimony produced on the part of the prosecutor (*b*).

Evidence against the offender.

It is a general rule, that if the facts which constitute the offence are all of a positive nature, they must be established affirmatively by the prosecutor. But, where they are of a negative nature, and afford ground of defence and exemption from penalty, they must come by way of defence in the proofs on the part of the defendant (*c*).

Certain averments in information not to be proved in evidence.

But by 3 & 4 Will. IV. c. 53, ss. 116, 117, some important provisions were made with respect to the proof of certain affirmative averments which had before been considered as requiring strict proof on the part of the prosecution. (*Ante*, p. 568).

Proofs.

By s. 116 it is enacted, that in case of any information or proceeding had under this or any other act relating to the revenue of Customs, the averments—

That the commissioners of the Customs or Excise have directed or elected such informations or proceedings to be instituted ; or,

That any vessel is foreign or *British ;* or,

That any person detained is or is not a subject of his Majesty ; or,

That any person detained is or is not a seaman or seafaring man, or fit and able to serve in the navy (*d*) ; or,

That any person is an officer of Customs,—

Shall be sufficient, without proof as to such fact or facts, unless the defendant in such case shall prove to the contrary.

Proof of *acting* as an officer sufficient without producing commission.

And, by s. 118, it is enacted, that if upon any trial a question shall arise, whether any person is an officer of the Customs or Excise, &c. evidence of his having *acted* as such shall be deemed sufficient ; and such person shall not be required to produce his commission or deputation, unless sufficient proof shall be given to the contrary. (*Ante*, p. 568).

Signals.

Falling under this rule, is the provision made in s. 53 of the last-mentioned statute, imposing penalties against persons making signals to smuggling vessels, which makes it an offence, whether the smuggling vessel be or be not within distance for the persons on board to see the signals made. (*Ante*, p. 551.)

What need not be proved by prosecutor.

Thus, although the information must aver that it was preferred by the direction of the commissioners of Customs, that averment, as well as the allegation that any vesssel is foreign or British, or that the defendant is or is not a subject of his Majesty, or a seaman or not, or fit for service, or that any person is an officer of Customs, is sufficient, without proof of such fact or facts, unless the defendant prove the contrary. (s. 116, *ante*, p. 568). So the fact that a person is an officer in the army, navy, or marines, duly authorized, and on full pay, or officer of Customs or Excise, will be sufficiently proved by showing that he had acted as such. (s. 118, *ante*, p. 568). So an order issued by the

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(*a*) See *Daubeny* v. *Cooper*, 10 *B. & Cres.* 237. And as to defence by the solicitor of Customs, see *West* v. *Taunton*, 6 *Bing.* 404 ; 4 *M. & P.* 79.

(*b*) *Paley on Convictions*, 2nd ed. 410, 411.

(*c*) *Paley on Convictions*, 2nd ed. 410, 411.

(*d*) Some of these averments are now unnecessary, since the alteration of the punishment by 4 Will. IV. c. 13, *ante*, 549, &c.

(8). *Proceedings on hearing, &c.*

commissioners of the Treasury, or Customs, or Excise, will be sufficiently proved by the official letter of instructions received by the officer of Customs or Excise. (s. 119, *ante*, p. 568).

And there is a provision that, in case any person be charged with or indicted for having made, or caused to be made, any fire or signal, for the purpose of giving information to a smuggling vessel, the burden of proof that such fire was not made with an unlawful intent shall lie upon the defendant. (s. 54, *ante*, p. 552).

Who are witnesses.

Every officer is a competent witness, although interested in the penalty. (s. 118, *ante*, p. 568). The acts relating to the Customs do not (like the Excise Act, 7 & 8 Geo IV. c. 53) contain any provision as to the evidence of Quakers (*a*), or to the summoning witnesses to give evidence, and therefore the law on those subjects is the same as in other proceedings before magistrates. Under the Excise laws it was held, that proof of a printed summons to witnesses, distributed and issued in blank by order of the commissioners to their agents, and afterwards filled up by one of them, without any special directions from the board, was sufficient, although not signed by any of the commissioners, nor issued in their individual names, such having been the constant usage in that respect since the introduction of the Excise (*b*).

Mode of taking the evidence.

The *evidence* must be given and the witnesses sworn and examined in the presence of the defendant, in order that he may have the opportunity of cross-examination; and if the witnesses have been irregularly examined in his absence, they should be re-sworn in the defendant's presence (*c*).

The defence, evidence for defendant.

If the prosecutor have made out a *primâ facie* case, the defendant is by evidence to disprove the charge, or bring himself within some proviso or exception which excuses or qualifies the fact charged, so as to exempt him from the penalty or forfeiture.

We have seen the cases in which the *onus probandi* is cast upon the defendant, (*ante*, pp. 551, 552).

With respect to goods seized by officers for non-payment of duties, or any other cause of forfeiture, it is provided that, in case any dispute shall arise whether the Customs, Excise, or inland duties, have been paid for the same, or the same have been lawfully imported, or concerning the place from whence such goods were brought, the proof thereof shall lie on the owner or claimer of such goods, and not on the officer who shall seize or stop the same. (3 & 4 Will. IV. c. 53, s. 114, *ante*, p. 567).

The court will not make an order that the witnesses of a defendant claiming goods seized by the Customs may be allowed to inspect them before the trial of the usual information *in rem*, on an affidavit of the party, that he believes he shall be able to prove by such witnesses that the goods are not contraband, but were made in this country, and, for the most part, by the witnesses who were required to be allowed to see them (*d*).

Of the judgment, and mitigating the penalty.

The rules respecting the adjudication are, for the most part, the same as in ordinary cases. If several be concerned in obstructing a Custom-house officer, each separately incurs the penalty (*e*). The justices are empowered to mitigate the penalties, except in cases otherwise expressly provided for, so as the sum to be paid by the offender be not less than one-fourth of the amount of the penalty in which the party shall have been convicted. (s. 81, *ante*, p. 559). As to mitigating sentences, see *ante*, p. 558.

(*a*) See *ante*, 487, note (*a*); and tit. "*Perjury*" (Oaths).

(*b*) *R.* v. *Steventon*, 2 *East*, 362.

(*c*) See Vol. I. tit. "*Conviction.*"

(*d*) *Attorney-General* v. *Harding and Others*, 4 *Price*, 381.

(*e*) *R.* v. *Clarke*, *Comp.* 610.

(9). *Form, &c. of conviction.*

(9). Of the Form and Requisites of the Conviction.

9 Form and requisites of conviction.

In summary proceedings under the 3 & 4 Will. IV. c. 53, and the 4 Will. IV. c. 13, against *smugglers*, a set of forms was prescribed in the schedule to each act. (*Ante*, pp. 569, 570). It becomes the duty of *justices*, not only in these, but in all other cases in which a summary jurisdiction is given to them, to record their proceedings in a formal manner, agreeably to the directions and the forms contained in the schedules, where they are respectively applicable to the particular case (*a*).

In practice, it is usual for the justices convicting a party under these acts to give the defendant a copy of the conviction, in order that if any objection arise upon the face of it, he may have the benefit of a *certiorari* to remove the proceedings into the Queen's Bench, and there take advantage of the objection.

The offences against the Customs' laws which most usually come under the cognizance of *justices of the peace* are those which were provided for by the 3 & 4 Will. IV. c. 53, and the 4 Will. IV. c. 13. See *ante*, Section III. "Prevention and Punishment of Smuggling."

In order to simplify the task of drawing up convictions on these latter acts compendious forms are given in the schedules thereto.

By 3 & 4 Will. IV. c. 53, s. 91, and 4 Will. IV. c. 13, s. 10, it was enacted, that all informations before justices, &c. for any offences committed against this or any other act relating to the revenue of Customs, and all convictions for such offences, and warrants of justices, &c. founded upon such convictions, shall be drawn *respectively* in the form or *to the effect* in the schedules to those acts annexed (*b*).

This enactment being only directory, does not dispense with a strict observance of the general qualities of convictions, as pointed out in a previous part of this work (*c*).

Among the most prominent of these qualities is *certainty*, and that the offence be not charged in the alternative (*d*).

Another essential requisite in drawing up these convictions is to take care to describe the offence *as it is defined in the statute, and expressly to allege all the facts necessary to support the proceeding, leaving nothing to be gathered by inference or intendment*. Also, if the offence be such only *sub modo*, the offender must appear to be within the penal conditions specified; and consequently all those modifying or exempting circumstances which are enacted in the same clause with the offence itself, and the absence of which is a constituent part of the crime, must be expressly noticed. Thus a conviction on 45 Geo. III. c. 121, s. 7, for carrying and conveying foreign brandy in half-ankers, alleged to be "*then and there liable to forfeiture*, the said offence being committed against the provisions of the acts for the prevention of smuggling," was held insufficient in not showing the particular grounds of forfeiture (*e*). And see *Deybel's case* (*g*).

Statutory forms of conviction being provided, (3 & 4 Will. IV. c. 53, and 4 Will. IV. c. 13, *ante*, pp. 569, 570), in those cases which most frequently come before justices of the peace for adjudication, little room is left for, nor indeed can much assistance be expected from, this part of the work, in the way of instruction as to the mode of drawing up such convictions.

In the forms given there is one remarkable feature: whilst it facili-

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(*a*) See *ante*, Vol. I. tit. "*Conviction.*"

(*b*) See *ante*, p. 561 & p. 559, and the forms, *ante*, pp. 569, 570.

(*c*) See *ante*, Vol. I. tit. "*Conviction.*"

(*d*) *R.* v. *Morley*, 1 *Young & Jer.* 221; *R.* v. *Pain*, 7 *D. & R.* 678.

(*e*) *Ex parte John Smith*, 3 *Dowl. & Ryl.* 461, and see *The King* v. *Everett*, 8 *B. & C.* 114; 2 *M. & R.* 35.

(*g*) 4 *B. & A.* 243.

(9). *Form, &c. of conviction.*

tates the province of the justices in drawing up a record of their proceedings, it deprives the party accused of the advantage which might reasonably be supposed to result from a different provision, namely, that there is no necessity for the convicting justices to set out the evidence on which their proceedings are founded (*a*). The forms therein given are, indeed, as compendious as can well be imagined for the record of proceedings upon a code of laws confessedly severe; and by which, in some instances, the justices are expressly deprived of the power of mitigating penalties, or of limiting the duration of imprisonment. Great latitude is left to the presumption, not only that justices will in all cases act with scrupulous conscientiousness in the discharge of their duty, but that their judgments will be governed by discriminating intelligence and judicial accuracy.

The only difficulty in this part of the justice's duty seems to consist in the accurate statement of the charge of which the offender is convicted; for if that be aptly described, the task of drawing up the remainder of the record is reduced to simplicity.

Rules for drawing up a conviction.

In drawing up a conviction on this model, the following rules should be observed:—

1. That the name of the county, city, &c. in which the conviction is made should be stated in the body of the conviction; for the mention of it in the margin is not sufficient (*b*).

2. That the day and year of exhibiting the information be specified, as well that it may appear to be subsequent to the offence, and prior to all the subsequent proceedings, as in order to ascertain that the prosecution is within the time limited by the statute.

3. That the names and styles of the magistrates before whom the complaint is lodged be set forth, from which it must appear that they are magistrates of the county or place where the offence is afterwards stated to have happened, or in which the offender was taken, brought, or carried, (when under the 6 Geo. IV. c. 108, s. 74 (*c*)), in order that their jurisdiction may be shewn on the face of the proceedings.

4. That the name of the officer giving the information should be stated; but this rather to show that the justices have acted upon due information, than from any disability in the officer to give evidence; for although he may be entitled to a share of the penalty on conviction, he is not on that account disqualified as a witness. (3 & 4 Will. IV. c. 53, s. 118, *ante*, p. 568).

5. That the information is made on oath is not necessary to appear on the face of the conviction, although the conviction can only take place on the oath of one or more credible witnesses (*d*). Where the act does not authorize the succinct form of conviction, it must appear that the *offence* was proved on the oath of one or more credible witnesses. (*Aldridge's case* (*e*)).

6. That the charge be accurately stated, as in the information, which must have all the certainty of an indictment as it respects the body or substance of the offence, with all its legal qualities, though it is not necessary to state the name of the defendant's wife when he is prosecuted for her offence (*g*). In this is included, 1st. The name of the offender; 2nd. The time of the offence; 3rd. The place where committed; and 4th. The charge itself as defined by the statute, taking care to observe perspicuity and certainty.

(*a*) Which is in general necessary since 3 Geo. IV. c. 23. *In matter of Rix*, 4 *D. & R.* 352.

(*b*) *R.* v. *Austin*, 8 *Mod.* 309.

(*c*) *Kite's and Lime's case*, 1 *B. & C.* 101; 2 *D. & R.* 213; 1 *D. & R. M. C.* 222; *R.* v. *Edwards*, 1 *East*, 278.

(*d*) *R.* v. *Kiddy*, 4 *D. & R.* 734; 2 *D. & R. M. C.* 364; and *Ex parte Aldridge*, 4 *D. & R.* 83; 2 *B. & C.* 600.

(*e*) *Attorney-General* v. *Saggers and Others*, 1 Price, 182.

(*g*) *Vide R.* v. *Jukes*, 8 *T. R.* 542.

(9). *Form, &c. of conviction.*

Upon this latter point, it is an inflexible rule that no intendment can be admitted to help out a description defective in the want of an essential component (*a*). The principal points to be attended to are the negation of exceptions (*b*), and the avoiding of repugnancy and duplicity (*b*). It is a rule, however, that nothing which may be rejected as surplusage shall vitiate (*c*).

7. That the offence must be expressly alleged to be against the statute; but the contrary was decided in the case of a revenue information in the Exchequer for smuggling, on motion in arrest of judgment (*d*).

8. That it be stated to have been duly proved, without setting out the evidence. Though this only applies where the particular act gives a concise form. In general the evidence must be stated (*e*).

9. That it do adjudge the penalty in the manner prescribed by the statute in the form given in the precedent; and,

10. That it appear to be under the hands and seals of the justices.

The conviction need not be drawn up *immediately* on giving judgment; and it may be postponed even until after the penalty has been levied, or commitment made out (*g*).

In concluding this subject, it is only necessary to observe, that if the justices have, by mistake, convicted a person improperly, it is right that *they should stop immediately*. If the conviction be only informal, it may be amended. (*Ante*, p. 561, s. 90). If a mandamus were to issue, directing them to levy the penalty, or enforce the proceeding, they might return that the conviction being invalid, they had therefore not enforced it; but where they have once fairly convicted a party, they ought to proceed to enforce that conviction; and though, if it be altogether a nullity, they are not bound to proceed in order to subject themselves to damages, it may be otherwise if the conviction is merely informal (*h*). When, however, cases of this kind occur, the more general and prudent course is to represent the matter to the attorney-general, or to the commissioners of Customs, by whom care would be taken to prevent injustice arising from the mistake of the magistrate.

(10). Of staying Proceedings by Nolle Prosequi.

10. *Nolle Prosequi.*

By 3 & 4 Will. IV. c. 53, s. 113, *ante*, p. 567, if any prosecution whatever shall be commenced for the recovery of any fine, penalty, or forfeiture incurred under this or any other act relating to the revenue of Customs or Excise, it shall be lawful for his Majesty's attorney-general, or for the lord advocate of Scotland, if he is satisfied that such fine, penalty, or forfeiture was incurred without any intention of fraud, or that it is inexpedient to proceed in the said prosecution, to stop all further proceedings, by entering a *nolle prosequi* or otherwise on such information, as well with respect to the share of such fine, penalty, or forfeiture to which any officer or officers may be entitled, as to the

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(*a*) See *Bluet* v. *Needs*, *Com.* 522; *R.* v. *Pratten*, 6 *P. R.* 559; *R.* v. *Sparling*, 1 *Stra.* 497; *Spieres* v. *Parker*, 1 *T. R.* 141; *Attorney-General* v. *Sherriff*, *Forest*, 43; *R.* v. *Theed*, 1 *Stra.* 608; 2 *Hale*, *P. C.* 170; *R.* v. *Ford*, 1 *Stra* 555; *R.* v. *Bryan*, 2 *Stra.* 1101; *R.* v. *Pemberton*, 2 *Burr.* 1035; *R.* v. *Hall*, 1 *T. R.* 320; *R.* v. *Stevens*, 5 *East*, 244.

(*b*) See 2 *Hawk. c.* 25, s. 58; *Id. c.* 64, *s.* 37; *R.* v. *Stocher*, 1 *Salk.* 371; *Wingfield* v. *Jeffreys*, 1 *Ld. Raym.* 284; *R.* v. *Evered*, *Cald.* 26; *Cro. Jac.* 623; *Creswick* v. *Rooksby*, 2 *Buls.* 174; *R.* v. *Marsack*, 6 *T. R.* 771; *Ellis*, *Exch.* 49; 2 *Hawk. c* 25, *s.* 62, 71, 87; *Wyatt* v. *Aland*, 1 *Salk.* 324; *R.* v. *Sadler*, 2 *Chit.* 519; *R.* v. *North*, 6 *D. & R.* 143; *R.* v. *Pain*, 7 *D. & R.* 678.

(*c*) *Wilson* v. *Lane*, 1 *Ld. Raym.* 20; *R.* v. *Hall*, 1 *T. R.* 320; *King* v. *Pippel*, *Id.* 235; *R.* v. *Jefferies*, 4 *T. R.* 767; *R.* v. *Horne*, *Coup.* 672.

(*d*) *Attorney-General* v. *Rattenbury*, 9 *Price*, 397.

(*e*) 3 Geo. IV. c. 23; 4 *D. & R.* 352.

(*g*) *Rex* v. *Barker*, 1 *East*, 186.

(*h*) *R.* v. *Robinson*, 2 *Smith*, 274.

(10). *Nolle prosequi.*

king's share thereof. The application to the attorney-general should be made as early as possible after intimation of the prosecution, and should be made by *Petition*, and founded on an *Affidavit* of the facts, shewing the innocence of the party, or circumstances upon which the expectation of relief is founded (*a*).

(11). Of the Proceedings on Execution.

11. The execution.

Execution under these laws is, in general, in the first instances against the *goods*, and afterwards, in case there is no sufficient distress, against the body of the defendant.

The remedies in the case of summary conviction before *two* justices are by warrants of distress or commitment, as the case may be, under the hands and seals of the convicting justices. By 3 & 4 Will. IV. c. 53, s. 82, (*ante*, p. 560), this provision, however, is restrained in cases where the person is in confinement for penalties under 100*l*. Forms for warrants in these cases respectively are given in the schedules to 3 & 4 Will. IV. c. 53, and 4 Will. IV. c. 13. (*Ante*, pp. 569, 570).

The warrants may be directed either to any officer of Customs, or to any constable acting within the jurisdiction of the justices. See 5 Geo. IV. c. 18, s. 6.

Power is given to the justices to mitigate the penalties to a sum not less than one-fourth of the penalty in which the party is convicted, 3 & 4 Will. IV. c. 53, s. 81, *ante*, p. 559: as to mitigating sentences, see 4 Will. IV. c. 13, s. 5, *ante*, p. 558: but this is limited to first offences, by 4 Will. IV. c. 13, s. 8, *ante*, p. 559; and by s. 9, commissioners of Treasury or Customs may discharge from confinement any prisoner.

By s. 74, provision is made for making allowances for the necessary subsistence of poor persons confined for offences against the laws of Customs and Excise. (*Ante*, p. 556).

For the disposition of condemned vessels and boats, and all goods whatever, seized for any breach of the Customs' laws, provision is made by s. 64. (*Ante*, p. 554).

For the disposition of seizures and penalties amongst officers acting under these laws, a scale of allowances by way of reward is made by s. 67. (*Ante, Ibid.*)

All penalties and forfeitures recovered before justices are to be paid to commissioners of Customs if they ordered the proceeding; and if ordered by commissioners of Excise, then to them. (3 & 4 Will. IV. c. 53, s. 94, *ante*, p. 561).

(12). Of Appeals, Affidavit, and Petition.

12. Of appeals, petitions, &c.

The only cases in which the right of *appealing* is recognized in terms by the Customs' laws is from the decisions of commissioners, sub-commissioners, and justices in Ireland, which right is regulated by 3 & 4 Will. IV. c. 51, s. 39. (*Ante*, p. 491). In other cases, no appeal is given, though it is otherwise under the Excise laws (*b*).

In the case of ships seized under certain circumstances, express power is given to the commissioners by 3 & 4 Will. IV. c. 53, s. 81, &c. to remit the forfeiture or penalties incurred (*c*).

A like provision is made by 3 & 4 Will. IV. c. 53, s. 4, with respect to vessels liable to forfeiture for having smuggled spirits, tobacco, &c. on board. (*Ante*, p. 538).

In cases of summary convictions by two justices for offences against these acts, the only remedy to the party, in case of any defect of legal form, is by *habeas corpus* and *certiorari*, which we will proceed to consider.

(*a*) The forms of *petition* and *affidavit* will be nearly the same as under the Excise laws, *post*, tit. "*Excise.*"

(*b*) See 7 & 8 Geo. IV. c. 53, s. 81, &c. *post*, tit. "*Excise.*"

(*c*) *Ante*, pp. 558, 560; and see *In the matter of Maria*, 1 *Price, Rep.* 4.

(13). *Habeas Corpus and Certiorari.*

(13). Of the Removal by Habeas Corpus and Certiorari.

Where a party has been convicted under these acts, and there is any defect apparent on the face of the proceedings of the justices, the remedy open to him, if in execution and confinement, is to move the Court of Queen's Bench on affidavit for a *habeas corpus* to bring up the body, and for a writ of *certiorari* to return the conviction into court (*a*).

Before these writs are granted, the court must be satisfied, in the first instance, that there is some reasonable ground of objection to the proceedings. Upon this subject, however, an express regulation has been enacted by 3 & 4 Will. IV. c. 53, s. 90. (*Ante*, 561).

In practice the court is in the habit of granting a rule *nisi* for the party to be discharged on *habeas corpus*, at his own election, in order to save him the expense of being brought up, or in a strong case in his favour, a writ of *habeas corpus* returnable *immediately*. If the writ be granted absolutely, and on the return thereto the grounds of objection are apparent, the court will discharge the party on motion, or make the rule absolute, if the return has been made to the rule *nisi*. But the mode of discussing the objection is generally made matter of arrangement between the prisoner's counsel and the counsel for the crown; who, if the objections are substantiated, give the proper directions for the liberation of the party, or the remission of the penalty, without first bringing him into court.

If a *certiorari* be granted in these cases, it seems that the effect of it is only to remove the *conviction*, and not the *depositions* of the witnesses (*b*).

Should the objection arise on the warrant of commitment, however defective that instrument may be, still if it show that there has been a conviction, the court will not take notice of the objection until the conviction has been returned: for if there be a good conviction the objection may be cured (*c*). (And see as to Warrant, *ante*, 549, n. (*b*).

The court for the same reason will not take notice of any objection unless it appears on the face of the conviction itself (*d*). An objection to the information will be of no avail, if it does not appear in the conviction.

In the case of *R.* v. *Rogers*, where in the *return* to a writ of *habeas corpus*, two causes were assigned for the prisoner's detention—first, a conviction for smuggling, and secondly, desertion from the navy—it was held, that the latter cause could not be impeached on affidavit for the purpose of showing either that the prisoner never had been in the navy, or that he had been illegally impressed, the court saying they were bound by the return: that if it was false, the remedy was by action (*e*). But in a subsequent case it was held, that a person in custody of an officer of Customs on a charge of smuggling, and brought up by *habeas corpus* at common law, *may controvert the truth of the return* to the writ by affidavit, by virtue of 56 Geo. III. c. 100, s. 4 (*f*).

(*a*) *See* tit. "*Certiorari*," *Vol. I.* and "*Habeas Corpus*," *Vol. III.* But by the 5 & 6 Vict. c. 47, s. 34, no writ of *Habeas Corpus* shall issue, without notice to the solicitor of the Customs.

(*b*) *Anon.*, *Lofft*, s. 348. The authority of this case, however, may be questioned. The principle which it lays down, if applied to convictions on the Customs' laws, by which the justices are not bound to set out the evidence on the record, might in many cases prevent relief to the party, by the writ of *certiorari*, however erroneously or unjustly he might have been condemned.

(*c*) *R.* v. *Hawkins*, *Fort.* 272; *R.* v. *Taylor*, 7 *D.* & *R.* 622. See *R.* v. *Shelps*, 3 *M.* & *S.* 331; and *ante*, *Vol. I.* tit. "*Commitment*."

(*d*) *R.* v. *Liston*, 5 *T. R.* 338; *R.* v. *J. Cashiobury*, 1 *D.* & *R. M. C.* 485.

(*e*) *The King* v. *Rogers*, 3 *Dowl.* & *R.* 607; 1 *D.* & *R. M. C.* 59.

(*f*) *Ex parte Beeching*, 6 *C.* & *R.* 209; 4 *B.* & *C.* 136. See now 3 & 4 Will. IV. c. 53, s. 90, *ante*, 561.

(13). *Habeas Corpus and Certiorari.*

Where prisoners taken into custody after an engagement at sea between a revenue cutter, and a vessel suspected to be a smuggler, of which the prisoners were the crew, were delivered on board a king's ship, and detained for fourteen days without any warrant, and were afterwards brought up by *habeas corpus* to be discharged, and it appearing from the return that there was cause to suspect them of a felony, the court refused a discharge, and directed them to be committed to the custody of the marshal of the Marshalsea, in order that they might be taken before a competent tribunal, to be dealt with according to law (*a*).

(14.) Of the Liability and Indemnity of Magistrates and Officers.

14. Liability and indemnity of magistrates, &c.

Besides the protection afforded to magistrates and officers acting under them by the general law (*b*), there are several special provisions in their favour when they act under the law of Customs.

The 3 & 4 Will. IV. c. 53, s. 61, enacts that persons assaulting officers by force or violence may be transported, &c. (*Ante*, 553). It indemnifies commanding officers of vessels in the service in hauling vessels on shore, without being liable to an action. (*Ante*, 553). If an officer be wounded, he is to be provided for (*ante, ibid.*) and rewarded. If a suit be brought on account of any seizure, and the judge shall certify that there was probable cause, the plaintiff is to have twopence damages only, besides the things seized, or the value thereof, and the defendant fined not more than one shilling. Process is not to be sued out against officers making seizures until a calendar month after notice, to be served upon him or left at his usual place of abode; and a fee of twenty shillings to be paid for preparing or serving such notice. (s. 103, *ante*, 564). No evidence is to be adduced of any causes of action not stated in the notice. (s. 104, *ante*, 564). Proof of notice must be given, and the officer may tender amends, or pay the same into court. (ss. 105, 106, *ante*, 564). The *limitation* of actions is *six months*. The general *issue* may be pleaded; and on verdict against plaintiff, defendant is to have treble costs. (s. 107, *ante*, 565).

Under the former act, 28 Geo. III. c. 37, s. 24, it was held, that although the judge certified that there was *probable cause* for the seizure, yet he was liable to damages found by the jury for the *deterioration of the goods seized* whilst in his possession (*c*).

Another protection afforded to officers acting under the laws for the prevention of smuggling is provided by 3 & 4 Will. IV. c. 53, s. 8, &c. See *ante*, 539.

Removal of action into the Exchequer.

It seems that if any matter properly cognizable on the revenue side of the Court of Exchequer is drawn into question elsewhere, or if the matter of the suit touches the profit of the king, it is a good ground of removing the action into the Exchequer; and an action against the commissioners of Excise, and officers executing a warrant of distress, on a conviction of the plaintiff, made by the commissioners of Excise, was accordingly removed into the office of pleas, upon the general grounds of this being a proceeding in the execution of their office (*d*). So where an action of trespass was brought in C. P. against a revenue officer, for an assault and false imprisonment, it was in like manner, upon an affidavit that the cause of action arose wholly in the execution of the defendant's duty in seizing the plaintiff's ship on suspicion of smuggling, removed into the office of pleas of the Court of Exchequer (*e*).

(*a*) *Ex parte Marinel Keans and others*, 2 *Dow. & Ry.* 411; 1 *C. & R. M. C.* 272.

(*b*) *See* tit. "*Justices*," *Vol. III.*

(*c*) *Laugher* v *Breffitt*, 5 *B. & A.* 762; 1 *D. & R.* 417.

(*d*) *Cawthorne* v. *Campbell*, 1 *Anstr.* 205; and see *Chitty's Gen. Prac.* 2 *Vol.* 396.

(*e*) *Siddon* v. *East*, 1 *Cromp. & Jer.* 12.

II. Of the Excise (*a*).

The duties of Excise, we have seen, are *inland* imposts, in contradistinction to those of the Customs, which are for the most part levied on articles the subject of *foreign* trade (*b*). It is a tax laid, in the first instance, upon the manufacturer or vender of various commodities, though, ultimately, in the increased price, falling upon the consumer. It is called *Excise* from the Dutch word *accise*, which signifies an assessment upon any commodity. Others derive it from the word *excisum*, as a part of the profit cut off from the whole (*c*). "The frauds that might be committed in this branch of the revenue, unless a strict watch is kept, make it necessary, wherever it is established, to give the officers a power of entering and searching the places of business of such as deal in excisable commodities, at any hour of the day and (in presence of a constable) of the night likewise, and inspecting the same and the goods therein found. And the proceedings in case of transgressions, are of a summary kind, by information before three of the commissioners of Excise or two justices of the peace, subject however (in either case) to an appeal (*d*). The apparent rigour of this search, and power of summary proceedings before commissioners, gives the case itself a character that has been thought incompatible with the temper of a free nation. For which reason, though Lord Clarendon tells us (Hist. b. 3) that, to his knowledge, the Earl of Bedford (who was made Lord Treasurer by King Charles the First, to oblige his Parliament) intended to have set up the Excise in England, yet it never made a part in that unfortunate prince's revenue, being first introduced on the model of the Dutch prototype, by the Parliament itself, after its rupture with the Crown. Yet such was the opinion of its general unpopularity, that when in 1642 'aspersions were cast by malignant persons upon the House of Commons, that they intended to introduce excises, the House for its vindication therein did declare that these rumours were false and scandalous, and that their authors should be apprehended, and brought to condign punishment.' Com. Journ., 8th Oct., 1642" (*e*).

The origin of these duties is thus traced to the reign of Charles the First (*f*). They were afterwards adopted in the time of the Protectorate; and soon after the Restoration two statutes were passed by which

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(*a*) As to the Excise duties in general, see *Bateman's Laws of Excise; Chitty's Commercial Law, Vol. I.* 150 *to* 816.

(*b*) *Ante*, 478.

(*c*) *Gilb. Excheq.* 252.

(*d*) See 7 & 8 Geo. IV. c. 53, ss. 65, 82; 4 & 5 Vict. c. 20, s. 26.

(*e*) See *Stephens' New Commentaries on the Laws of England, Vol. II. p.* 579.

(*f*) This was begun on the 17th of September, 1643, by the Long Parliament; and eight commissioners of Excise were appointed, and they were to choose their own officers, viz. their register, collectors, clerks, and other subordinate officers. The Parliament's ordinance for the Excise bears date July 22, 1643. It was laid upon liquors, grocery-wares, silks, linens, cloths, furs, and almost all other sorts of commodities imported. That the reader may have a notion of it, it will be proper to mention some of the particulars. Every pound of tobacco not of the English plantation was to pay, over and above all Customs, 4*s.*; and that of English plantation, 2*s.*; every tun of wine retailed, 6*l.*, and for private use, 3*l.*; Malaga raisins, one farthing per pound; currants, 1*d.*; loaf-sugar, 4*d.* per pound; cloth of gold and silver, 8*s.*, and tissue, 10*s.* a yard. Damask table linen, 1*s.* a yard, &c. It is somewhat strange, that *Rushworth* has not inserted this curious ordinance in his *Collections*. 2 *Rapin's Hist.* 497, *note* 3.—*Observations in former editions.*

Introductory observations.

they were confirmed to the Crown;—the stat. 12 Car. II. c. 23, which granted *an Excise* on certain commodities for the *King's life;* and the other statute (c. 24) of the same reign, which, in lieu of the military tenures, granted to the king, his heirs and successors, an *hereditary Excise* on certain other commodities (*a*). Since which period "it has constantly formed part of our system of taxation. And however odious its name formerly was to the people of England, it is now viewed with toleration. It is allowed, indeed, not only to be a convenient and effective species of impost, but to be attended with this collateral advantage, that the survey of Excise tends to protect commodities from fraudulent adulteration. Among the articles subject to the Excise, are malt, spirits, soap, glass, paper, bricks, hops, sugar, and vinegar. It comprises, besides, the duty on lands and goods sold by auction." (*New Commentaries on the Laws of England, Vol. II.*, p. 581).

The duties under the *superintendence* or *management* of the commissioners of Excise are by way of distinction denominated the duties of *Excise*, and other duties under the *management* of the commissioners of Excise. The former are such imposts as have from their *first* establishment been within the receipt of the commissioners of *Excise;* the latter are those which were *originally* under the management of other commissioners appointed for that purpose, but which have since been *transferred*, by different acts of Parliament, to the commissioners of the *Excise*. (See 7 & 8 Geo. IV. c. 53, s. 3).

What are duties of Excise properly so called.

The duties of Excise, *properly so called*, are those imposed on ale, beer, cider, perry, mum, mead, and spirituous and other liquors; and also on malt, salt, hops, &c., being particularly so denominated by the laws of Excise, or so accounted by them.

Distinction between Excise and inland duties.

But according to *R.* v. *Justices of Surrey*, 2 T. R. 504, the distinction generally understood between Excise duties and inland duties, under the management of the commissioners of Excise, is this,—that the law of Excise is understood to relate only to *liquors;* and that the inland duties, under the management of the commissioners of Excise, are understood to apply to malt, dry goods, and other articles, which had of late been put under their management.

Division of the subject

The present law of Excise may be considered under three principal heads.

I. *Of the Excise Laws in general.*

II. *Of the Excise Laws affecting each particular Article alphabetically arranged, as Ale and Beer, Auctioneers, &c.*

III. *Practical Proceedings before Justices for Penalties, &c.*

I. OF THE EXCISE LAWS IN GENERAL.

I. The Excise Laws in general

May be subdivided and considered under the following heads:—

(1.) *Repeal of former Enactments, and present Law.*
(2.) *Of the Commissioners, Assistant Commissioners, Inferior Officers, Hours of Attendance, Bribery, &c.*
(3.) *Of the Receiver-General, Comptroller, and Auditor.*
(4.) *Lands and Buildings for purposes of Excise.*
(5.) *Duties of Excise, Licences, &c.*
(6.) *Complaint of Overcharges.*

(*a*) *Wood* v. *Chessal*, 2 *Bla. R.* 1255.

(7.) *Of Entries and Seizures, obstructing Officers, removing Goods to avoid Duty.* (1). *Repeal, &c.*
(8.) *Of claiming Goods seized.*
(9.) *Proceedings for Condemnation of Seizures, Warrants, &c.*
(10.) *Prosecutions and Proceedings in Courts.*
(11.) *Proceedings before Commissioners and Justices.*
(12.) *Of Entry of Nolle Prosequi, Mitigating Penalties, Staying Proceedings, &c.*
(13.) *Writs of Capias, Arrest, Escape, and Imprisonment Allowances.*
(14.) *Selling forfeited Property, &c.*
(15.) *Protection to Officers, Notice of Action, Forgery.*
(16.) *Offences against Act, Offenders removing, &c.*
(17.) *Permits and Certificates.*

(1.) REPEAL OF FORMER ENACTMENTS, AND EXISTING LAW IN GENERAL, UNDER 7 & 8 Geo. IV. c. 53; 4 & 5 Will. IV. c. 51; and 4 & 5 Vict. c. 20.

Consolidation of duties in general.

The acts of Parliament respecting the duties of Excise having become numerous and complicated, the legislature found it necessary to consolidate and simplify the same: and accordingly a *consolidation of the Excise duties* was effected by the 43 Geo. III. c. 69 (4th July, 1803), by which all the duties, allowances, bounties, and drawbacks, and other duties under the management of the commissioners of Excise, then in force, except arrears, penalties, &c. were to cease; and the duties to be afterwards paid were set forth in tables, together with allowances, bounties, and drawbacks. But this statute did not repeal the duties upon malt, mum, cider, and perry, granted by the 43 Geo. III. c. 3, nor the duties on malt, tobacco, and snuff, continued by 43 Geo. III. c. 4, except with respect to the duties imposed by that act on tobacco of the growth, production, and manufacture of the plantations or dominions of Spain and Portugal delivered for exportation; nor did it repeal or alter the countervailing duties of Excise upon the importation of goods into Great Britain from Ireland, granted by 39 Geo. III. c. 67, or the drawbacks payable on goods exported from Great Britain to Ireland, except the countervailing duties and drawbacks for beer, ale, and mum, bricks and *tiles* (*a*), cider, perry, hops, mead or metheglin, spirits, vellum and parchment, gilt and silver wire, and gold and silver thread, lace, or fringe. Since the passing of the statute 43 Geo. III. c. 69, the Excise duties have been materially altered by different acts of Parliament.

Consolidation of the Board of Excise.

A consolidation of the Board of Excise had been effected under the powers and provisions of the 4 Geo. IV. c. 23 (A. D. 1823). By subsequent enactments, however, considerable complication had taken place on this subject; when in the year 1827 an important act was passed, especially connected with the jurisdiction of *justices of the peace and inferior peace-officers*, viz. the 7 & 8 Geo. IV. c. 53, intituled, "An act to *consolidate* and amend *the laws* relating to *the collection and management* of the revenue of Excise throughout Great Britain and Ireland," (*c*) and which, after reciting that the 4 Geo. IV. c. 23, consolidated the boards of Excise, and that the laws relating to his Majesty's revenue of Excise had become very numerous and compli-

7 & 8 Geo. 4, c. 53 (*b*).

(*a*) The Excise duties on tiles are now wholly repealed by 3 & 4 Will. IV. c. 11.

(*b*) This statute has been materially altered by the 4 Will. IV. c. 51; and the 4 & 5 Vict. c. 20. See next and subsequent pages.

(*c*) It will be observed that the enactments in this statute are, in many respects, similar to the ancient *Hereditary Act*, 12 *Car. II.* c. 24.

(1). *Repeal, &c.*

7 & 8 Geo 4, c. 53.

cated, and that it would generally tend to the public benefit to consolidate and amend the same, and for that purpose to collect into one act the several powers, authorities, regulations, and provisions thereof, which apply or relate *to the collection and management* of the said revenue, then proceeds with the new enactments, and declares that they shall commence from 5th January 1828.

Former regulations which are inconsistent with this act repealed.

Sect. 127. "That from and after the commencement of this act, all laws, powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things, provided for or contained in any act or acts of Parliament in force at and immediately before the commencement of this act, relating to the revenue of Excise in any part of the United Kingdom, or to any matter or thing expressly provided for by this act, which *are repugnant to or inconsistent with the several matters*, clauses, provisions, and regulations of this act, or any of them, shall be and the same are hereby respectively repealed, and shall no longer be put in force or observed in any part of the United Kingdom; save and except so far as the same repeal or repeals any former act or acts or any part or parts of any former act or acts of Parliament: and save and except so far as the same, or any of them, relate or relates to the recovering, suing for, mitigating, levying, or paying any duty, or any arrear thereof, charged or chargeable, or any penalty or forfeiture incurred for any offence against any act or acts of Parliament relating to the revenue of Excise, which shall have been or shall be committed, and for the recovery of which duty or arrear thereof, penalty or forfeiture, proceedings shall have been commenced before and shall be depending at the time of the commencement of this act; and save and except also as to any duty or arrear thereof charged or chargeable, and penalty or forfeiture which shall have been incurred, under or by virtue of any act or acts of Parliament relating to the revenue of Excise by this act repealed as aforesaid, for which no proceedings for the recovery thereof shall have been commenced before and shall be depending at the commencement of this act."

Sub-commissioners and commissioners of appeal in Ireland continued to complete depending proceedings.

Sect. 128. "Provided always, that all sub-commissioners and commissioners of appeal in Ireland, who at any time before the commencement of this act shall have been appointed under the laws relating to the revenue of Excise in Ireland, shall respectively continue to execute and perform the several duties of their respective offices until all proceedings which shall have been or shall be begun before and be depending at the commencement of this act before them judicially shall be completed or ended; and that it shall be lawful for such several sub-commissioners and commissioners of appeal respectively in Ireland, and they are hereby respectively authorized and required, to continue to act in the performance of their several judicial duties pursuant to the laws in force at and immediately before the passing of this act, for the purpose of and until all such proceedings shall be completed or ended; and that nothing in this act shall extend or be deemed or construed to extend to repeal, annul, or make void any law, or part of any law, or any act or acts of Parliament, or any part thereof, relating to such proceedings or any of them, or any part thereof, until all such proceedings shall be completed and ended: Provided always, that all penalties and forfeitures which shall have been or shall be incurred under or by virtue of any act or acts of Parliament relating to the revenue of Excise before the commencement of this act, for the recovery of which no proceedings shall have been commenced before and be depending at the commencement of this act, and all penalties and forfeitures which shall be incurred under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise after the commencement of this act, shall be recovered and applied in such manner and by such form or forms and ways of proceeding as are by this act directed and provided; any thing in any act or acts of Parliament to the contrary thereof notwithstanding."

All duties and penalties to be recovered as directed by this

(1). *Repeal, &c.*

7 & 8 Geo. 4, c 53.

As the sect. 127 only repeals those prior enactments which are *repugnant to or inconsistent with* the new regulations, it follows, that where there is any prior law not repugnant to or inconsistent with the new law, it is still applicable and in force; and there seem a few provisions of this nature relating to offenders escaping, &c.; the trial of felonies in any county; the deceiving officers by false weights, &c. In the notes to this edition the former enactments and decisions upon them are referred to.

4 & 5 Will. 4, c. 51. Repeal of part of 7 & 8 Geo. 4, c. 53.

The 4 & 5 Will. IV. c. 51, intituled, "*An Act to amend the laws relating to the collection and management of the revenue of Excise,*" (13th Aug. 1834), after reciting the 7 & 8 Geo. IV. c. 53, and that it required to be amended, enacted, by s. 1, "that all the powers and authorities by said recited act vested in, and all orders, matters, and things thereby directed to be given or done by the commissioners or assistant commissioners of Excise in Scotland and Ireland respectively, are and shall be vested in, given, and done by the commissioners of Excise appointed or to be appointed under the said recited act."

Sect. 2 enacts, that three commissioners shall constitute a board.

Sect. 3, that commissioners and officers of Excise shall not be required to take parish apprentices.

Sect. 4 repeals 7 & 8 Geo. IV. c. 53, s. 18.

Sect. 5 enacts in what manner entries of premises shall be made.

Sect. 6 imposes penalty for using any premises or utensils without having made entry thereof.

Sect. 7 imposes penalty for using premises or utensils for any other purpose than that for which entered.

Sect. 8 enacts, that not more than one entry shall be in force for the same premises.

Sect. 9, that if a trader abscond or quit entered premises without withdrawing the entry, any other person may, with consent, make entry of the premises,

Sect. 10 repeals 7 & 8 Geo. IV. c. 53, s. 25.

Sect. 11 enacts, that Excise traders shall pay their duties at such time and place and to such person as shall be appointed, or upon demand made by order of the commissioners, on pain of forfeiting double duty.

Sect. 12, that goods fraudulently produced to obtain drawback, shall be forfeited with treble value, or 100*l.*

Sect. 13 enacts, that goods condemned for being adulterated or mixed with any prohibited ingredients, shall be destroyed.

Sect. 14 gives power to reward officers detecting private manufactories.

Sect. 15 repeals 7 & 8 Geo. IV. c. 53, s. 30.

Sect. 16 enacts that constables or peace officers not assisting officers of Excise when required, shall forfeit 20*l.*

Sect. 17, that where a defendant arrested under an attachment shall refuse to enter an appearance, he may be served with a copy of the information and a rule to plead, and that in default of appearing and pleading, judgment may be entered up against him.

Sect. 18 repeals 7 & 8 Geo. IV. c. 53, s. 66.

Sect. 19 enacts, that information shall be exhibited before commissioners of Excise or justices within four months after offence committed or seizure made, and parties to be summoned.

Sect. 20, that commissioners of Excise and justices shall not be authorised to mitigate the penalty of *double duty* for nonpayment of Excise duties.

Sect. 21, that expenses of prosecutions before commissioners of Excise or justices of the peace, may be ordered to be paid out of the revenue.

Sect. 22, that in case of the death, removal, or absence of any officer

(1). *Repeal, &c.*

4 & 5 Will. 4, c. 51.

of Excise in whose name any information may have been exhibited, the proceedings may be carried on by any other officer.

Sect. 23, that if there shall not be twenty days between giving notice of appeal and the next quarter sessions, the appeal shall be to the following sessions.

Sect. 24, that witnesses tendered for examination at the original hearing before commissioners of Excise or justices, may be examined on hearing the appeal.

Sect. 25, that persons liable to arrest under the laws of Excise, not being detained at the time, may be afterwards arrested.

Sect. 26 repeals 7 & 8 Geo. IV. c. 53, s. 120.

Sect. 27 relates to complaints of overcharges and overpayments.

Sect. 28 enacts that offences under the Customs' laws may be sued for by order of commissioners of Excise, and in the name of officers of Excise.

Sect. 29 gives power to commissioners of Excise, with consent of Treasury, to take lands, &c. upon *lease.*

Sect. 20 respects the construction of the terms used in this act of Parliament.

Further alteration and amendment.

This branch of the Excise law has again undergone a change, for by the 4 & 5 Vict. c. 20, intituled, "*An Act to alter and amend certain laws relating to the collection and management of the duties of Excise,*" (18th May 1841), after reciting the 7 & 8 Geo. IV. c. 53, and the 4 & 5 Will. IV. c. 51, and that these acts required to be altered and amended;

Sect. 1 enacts, what are to be market-towns within the meaning of the 7 & 8 Geo. IV. c. 53.

Sect. 2, that certain acts required to be done by surveyors or general surveyors within the limits of the chief office of Excise may be done by collectors or supervisors.

Sect. 3, that bonds or securities are not to be required from officers who do not collect or receive money.

Sect. 4, that keepers of Excise offices are declared not to be officers of Excise.

Sect. 5, that all vessels, &c. not duly entered, and all goods found in unentered premises, are declared to be forfeited.

Sect. 6, that managers or directors of joint-stock companies or corporations are to make entry on behalf of the company or corporation.

Sect. 7, that married women, whose husbands may become insane, or incapable of transacting their own affairs, or who may be separated from them and out of the kingdom, may, with the consent of the comsioners of Excise, make an entry of premises.

Sect. 8 respects the 7 & 8 Geo. IV. c. 53, s. 47.

Sect. 9 repeals *ibid.* s. 49.

Sect. 10 repeals *ibid.* s. 50.

Sect. 11 repeals *ibid.* s. 51.

Sect. 12 repeals *ibid.* s. 52.

Sect. 13 repeals *ibid.* s. 53.

Sect. 14 enacts, that the lords of the Treasury are to appoint a comptroller and auditor of the Excise.

Sect. 15, that all the revenue of Excise is to be paid over to the receiver-general.

Sect. 16, that all monies, bills, notes, &c. are to be paid by the receiver-general of the Excise into the Bank of England.

Sect. 17 provides and enacts, that payments for ordinary purposes may be made, and money retained upon special occasions.

Sect. 18 enacts, that all monies, bills, notes, &c. paid into the Bank of England by the receiver-general of Excise are to be forthwith entered in a book by an officer of the Bank, and the book to be daily inspected by the check officers of Excise.

(1). *Repeal, &c.*

4 & 5 Will. 4, c. 51.

Sect. 19, that money is to be paid over to the Exchequer, under the provisions of the 4 & 5 Will. IV. c. 15, and the orders of the Treasury.

Sect. 20, that the commissioners of Excise are empowered to appoint check officers, and all persons so appointed or directed by the Treasury are to be deemed the proper check officers.

Sect. 21 provides and enacts, that Excise duties in Ireland are to continue to be paid into the Bank of Ireland, unless the Treasury shall otherwise order.

Sect. 22 enacts, that the accountant-general of Excise shall prepare and pass an account annually before the comptroller and auditor of the Excise.

Sect. 23 repeals the 7 & 8 Geo. IV. c. 53, s. 28.

Sect. 24 enacts, that all goods, subject to Excise duties, and all materials, machinery, vessels, and implements used in the manufacture, shall be liable for all duties, arrears, and penalties incurred, whilst in the possession of the trader—*provided*, that where goods duly charged with duty have been sold, and delivered in the fair and ordinary course of trade, the liability shall cease.

Sect. 25 repeals the 7 & 8 Geo. IV. c. 53, s. 81.

Sect. 26 enacts, that persons aggrieved by the judgment of the commissioners of Excise may appeal to the Barons of the Exchequer.

Sect. 27, that the registrar of the commissioners of Excise shall be registrar of the Barons on such appeals.

Sect. 28, that fees may be taken by the registrar and Barons' clerk.

Sect. 29, that witnesses summoned on an appeal, and not attending, or refusing to give evidence, shall forfeit 50*l*.

Sect. 30, that seven clear days' notice shall be given of the hearing of an appeal.

Sect. 31, that any summons, notice, order, &c. may be served by officers of Excise.

Sect. 32, that seizures, under 15*l*. value, unless claimed in one month, shall be condemned.

Sect. 33, that complaint of overcharge or over-payment of duty not to be made to the commissioners of Excise or justices of the peace, in cases where the question shall be the liability of goods to duty, or the rate of duty, or the mode of charging the duty.

Sect. 34, that all lands and buildings taken for the service of the Excise shall be vested in the secretary of the Excise.

The above is an abstract of the present law, upon the collection and management of Excise. The several clauses in these statutes will be found at length under their appropriate heads immediately following.

The statutes imposing the amount of duties upon particular articles will be found under the Third Section, *post*.

(2). *Of the commissioners, &c.*

(2). Of the Commissioners, Inferior Officers, Hours of Attendance, &c.

[7 & 8 Geo. IV. c. 53; 4 & 5 Will. IV. c. 51; 4 Vict. c. 20.]

7 & 8 Geo. 4, c. 53.

Appointment of commissioners of Excise for the United Kingdom, and assistant commissioners for Scotland and Ireland.

The 7 & 8 Geo. IV. c. 53, s. 1, enacts, "That it shall be lawful for his Majesty, his heirs and successors, from time to time to appoint, under the great seal of the United Kingdom, any number of persons not exceeding thirteen to be commissioners of Excise for the collection and management of the whole of the revenue of Excise arising in and throughout the whole of the United Kingdom of Great Britain and Ireland, and the islands and territories thereunto respectively belonging, and also to appoint any number of persons not exceeding four to be assistant commissioners of Excise to sit and act in manner hereinafter mentioned, in and for Scotland and Ireland (*a*); and that each of such commis-

(*a*) See the 4 & 5 Will. IV. c. 51, s. 1, p. 618.

(2). *Of the commissioners, &c.*

sioners and assistant commissioners, when so appointed, shall have and hold his respective office during his Majesty's pleasure."

7 & 8 Geo. 4, c 53.

Four commissioners to constitute a board of Excise.

Sect. 2. "That any *four* (*a*) or more of the commissioners of Excise shall constitute a board of commissioners of Excise for the United Kingdom, for the collection and management of the whole of the revenue of Excise arising in and throughout the whole of the United Kingdom of Great Britain and Ireland, and the islands and territories thereunto respectively belonging, and of all the duties imposed or to be imposed by any act or acts of Parliament which have been or are or shall be made payable to his Majesty, his heirs and successors, as duties of Excise, or duties under the collection and management of the commissioners of Excise, and of all arrears of any of such duties, and of all penalties and forfeitures arising or which shall have arisen, or shall arise or accrue, or remain or become due to his Majesty, his heirs and successors, within the said United Kingdom of Great Britain and Ireland, and the islands and territories thereunto respectively belonging, under any law or laws touching or relating to the said revenues; and that every such board shall have full power and authority to order and direct, and to do and permit to be done, throughout the United Kingdom, or in any part thereof, all acts, matters, and things which shall by this act, or by any other act or acts of Parliament, be required to be made or done by the commissioners of Excise, or which shall relate to or in anywise concern the revenue under their collection and management; and that all rules, orders, acts, matters, and things relating to or concerning the said revenue, which shall have been or shall be made or done by any such board, shall be good, valid, and effectual in law, to all intents and purposes whatsoever, as if made or done by all the commissioners of Excise: Provided always, that every such board, and the commissioners of Excise respectively, shall in all things relating to the execution of the duty of such board, or of such commissioners respectively, be subject to the authority, direction, and control of the lord high treasurer and commissioners of the Treasury, and shall obey all orders and instructions which shall have been or shall from time to time be issued to such board or commissioners in that behalf by the lord high treasurer, or any three or more of the commissioners of the Treasury".

Their power and authority.

Commissioners subject to orders and control of the Treasury.

4 & 5 Will. 4, c. 51.

The 4 & 5 Will. IV. c. 51, alters the above two sections of the 7 & 8 Geo. IV., as it enacts by

All acts required to be done by commissioners in Scotland and Ireland to be done by general commissioners.

Sect. 1, "That all the powers and authorities by the said recited act vested in, and all orders, matters, and things thereby directed to be given or done by the commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, are and shall be vested in, given, and done by the commissioners of Excise appointed or to be appointed under the said recited act."

Three commissioners to constitute a board.

And by sect. 2, "That any *three* or more of the commissioners of Excise shall constitute a board of commissioners of Excise, and shall have full power and authority to act as a board of commissioners, and to order and direct and do and to permit to be done throughout the United Kingdom, or in any part thereof, all acts, matters, and things relating to the revenue of Excise, as fully and effectually as if ordered, directed, and done, or permitted to be done, by a board of four of the said commissioners of Excise, as required by the said recited act".

7 & 8 Geo. 4, c. 53. Wales and Berwick-upon-Tweed included in Excise acts.

The 7 & 8 Geo. IV. c. 53, s. 3, enacts, "That in all cases relating to the revenue under the collection and management of the commissioners of Excise, where 'England' or 'Great Britain' is or shall be mentioned in this act, or in any other act or acts of Parliament relating to the revenue of Excise, the same shall be deemed and taken to extend to and include Wales and the town of Berwick-upon-Tweed; and that

(*a*) See 4 & 5 Will. IV. c. 51, s. 2.

(2). *Of the commissioners, &c.*

7 & 8 Geo. 4, c. 53. Definition of other terms.

where 'the United Kingdom' is or shall be mentioned, the same shall be deemed and taken to extend to and include Great Britain and Ireland, and the islands and territories thereunto respectively belonging; and that where 'the revenue of Excise' is or shall be mentioned, the same shall be deemed and taken to extend to and to include the whole revenue under the collection and management of the commissioners of Excise; and that where any power or authority (excepting such power and authority as is restricted to the limits of the chief office of Excise in London) is or shall be given to the commissioners of Excise generally, the same shall be deemed and taken to extend over and throughout the United Kingdom as aforesaid; and that where any power or authority is or shall be given to the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, the same shall be deemed and taken to extend only over and throughout Scotland or Ireland, and the islands and territories thereof respectively; and that this act, and the several provisions thereof respectively, shall be deemed and taken to apply to all acts of Parliament relating to the revenue of Excise which shall hereafter be made, except in any of the above cases where the same shall be otherwise specially directed or provided."

Commissioners to appoint collectors and other officers, and give them such salaries as Treasury shall direct.

Sect. 4. "That it shall be lawful for the commissioners of Excise, or any four or more of them, and they are hereby authorized and required from time to time to appoint, by writing under their hands and seals, such and so many collectors *and other subordinate officers* (*a*), and accomptants, clerks, and assistants, for collecting, receiving, managing, and accounting for the said revenue of Excise, as to the said commissioners, or any four or more of them, shall seem meet and requisite, taking in the name of his Majesty, from them and every of them, sufficient security for the due performance of the respective duties committed to their charge; and all such commissions and appointments shall be deemed, construed, and taken to be good, valid, and effectual, and the persons holding the same shall have full power and authority in respect thereof to execute the duties of their respective offices, and to enforce, in the execution thereof, all laws, regulations, penalties, and forfeitures relating to the said revenue in every part of the United Kingdom; and it shall be lawful for the said commissioners, or any four or more of them, and they are hereby authorized to place, remove, promote, suspend, reduce, discharge, or restore, as they shall see cause, any such collector or other subordinate officers, or accomptants, clerks, or assistants, and to allow and pay to them respectively for their salaries, and to them or to any other person or persons, for charges necessarily arising in the collection or management of the said revenue, such sum and sums of money, allowance and allowances, as shall be conformable to such rules, regulations, and directions as may from time to time be received by the said commissioners from the lord high treasurer, or any three or more of the commissioners of the Treasury, for the direction and guidance of the commissioners of Excise in such behalf: Provided always, that the number of each description of officers and persons so to be appointed shall not in any case (except as hereinafter mentioned) exceed the number which shall be fixed and allowed by any general warrant or warrants, order or orders, which shall have been or shall from time to time be issued for that purpose by such lord high treasurer or commissioners of the Treasury; and provided also, that in all cases in which it may be deemed necessary to appoint a greater number of officers of the lowest class than shall have been authorized by any such

Provided that the number of inferior officers shall not be increased without permission of Treasury.

(*a*) There are several subordinate officers of various descriptions in each department of the Excise and Customs who bear no legal name, and are admitted into the service on taking oath of office, giving bond if required, and most ample testimonies of their qualifications. 1 *Highmore on Excise*, 12.

(2). *Of the commissioners, &c.*

7 & 8 Geo. 4, c 53.

Inferior officers shall continue, notwithstanding any change of commissioners.

warrant or warrants, order or orders, the persons to be named to every such appointment shall be submitted by the commissioners of Excise to and approved by such lord high treasurer or commissioners of the Treasury".

Sect. 5, provides and enacts, "That all collectors and other subordinate officers, and accomptants, clerks, and assistants, who are or have been or shall be from time to time duly and legally appointed by the commissioners of Excise, do and shall remain and continue in their respective offices, notwithstanding the death or removal of any commissioner or commissioners by whom they were so appointed, and notwithstanding any alteration, change, or other determination of the commission of such commissioners, until the respective appointment of such collectors or other subordinate officers, or accomptants, clerks, or assistants, shall become void by death, or shall be revoked by the commissioners of Excise."

Appointment of assistant commissioners for Scotland and Ireland, under control of commissioners.

Sect. 6. "That it shall be lawful for the lord high treasurer, or any three or more of the commissioners of the Treasury, from time to time to order and direct any one or more of the commissioners of Excise, together with two of the assistant commissioners of Excise, to sit and act as such commissioner or commissioners and assistant commissioners respectively in and for Scotland, and to order and direct any one or more of the commissioners of Excise, together with two of the assistant commissioners of Excise, to sit and act as such commissioner or commissioners and assistant commissioners respectively in and for Ireland, for the despatch of business in those parts respectively of the United Kingdom, under the control and direction nevertheless of the board of commissioners of Excise; and that such commissioner or commissioners and assistant commissioners for Scotland and Ireland respectively (under such control and direction as aforesaid) shall have and be invested with the collection and management of the revenue of Excise, and all matters and things relating thereto arising in Scotland and Ireland respectively, and that any two of such commissioner or commissioners and assistant commissioners, in Scotland and Ireland respectively, shall (under such control and direction as aforesaid) have full power and authority to order and direct, and to do and permit to be done, all acts, matters, and things relating to the revenue of Excise in Scotland and Ireland respectively; and that all rules, orders, acts, matters, and things, which shall have been or shall be so made and done by such commissioner or commissioners and assistant commissioners, or any two of them, in Scotland and Ireland respectively, shall be good, valid, and effectual in law, to all intents and purposes whatsoever. Provided always, that all and every such commissioner or commissioners and assistant commissioners, in Scotland and Ireland respectively, shall in all things observe, perform, and fulfil, and cause to be observed, performed, and fulfilled, in and throughout Scotland and Ireland respectively, the several orders, rules, directions, and regulations, touching or relating to the said revenue, which shall have been or shall be made or given by the board of commissioners of Excise."

No person to act in any office under the Excise before he has taken the following oath (a).

Sect. 7. "That no person who shall be appointed to be a commissioner or assistant commissioner of Excise, or who shall be appointed to any other office relating to the revenue of Excise, shall be capable of acting as such commissioner or assistant commissioner, or in any other such office, until he shall, before two or more justices of the peace in the county where his office is or shall be, or before one of the

(a) By the authority of the Lords of the Treasury, under the provisions of the 5 & 6 Will. IV. c. 62, ss. 2 & 3, a declaration is substituted in lieu of the above oath of office: the oath of allegiance, however, must in all cases still be taken. (Ibid. s. 6). *See* Treasury warrant, published in the London Gazette, 28th June, and 12th July, 1836, and tit. "*Oaths.*"

Barons of the Exchequer of England, Scotland, or Ireland, take and subscribe the oath hereinafter following; that is to say,

(2). *Of the commissioners, &c.*

7 & 8 Geo. 4, c. 53.

I, A. B., do swear to bear true allegiance to his Majesty, and to execute the office of , to which I am appointed, truly and faithfully, without favour or affection; and that I will from time to time true account make and deliver to such person or persons as shall be duly appointed to receive the same; and that I will not take any fee or reward in or for the execution of the said office from any other person than H. M. or those whom H. M. shall appoint in that behalf.

Certificate of oath to be recorded.

And the justices of the peace, or Baron of the Exchequer, before whom such oath as aforesaid shall have been taken and subscribed, shall certify the taking thereof as aforesaid to the general quarter sessions, or Court of Exchequer, as the case may be, to be there recorded, and to the auditor of Excise, by whom such certificate shall be entered; and if any person shall act as a commissioner or assistant commissioner of Excise, or in any other office relating to the revenue of Excise, before he shall have taken and subscribed such oath as aforesaid, such person shall, for every month in or for which he shall have so acted, without having taken such oath, forfeit and lose the sum of fifty pounds."

Penalty 50*l.*

No member of the House of Commons to be a commissioner or officer of Excise.

Sect. 8. "That no person being a member of the Commons House of Parliament shall, during the time of his being such member of Parliament, be capable of being a commissioner or assistant commissioner of Excise, or commissioner of appeal under this act, or of being an officer of Excise, or person employed in the charging, collecting, or managing of any part of the revenue of Excise, or in comptrolling or auditing the accounts thereof, nor shall be capable of taking, holding, or executing, or being in any manner concerned in executing, either by himself or deputy, or by any other person or persons in trust for him, or for his use and benefit, any such office or employment; and if any person shall, during the time of his being a member of the Commons House of Parliament, at any time take, hold, or execute, or be in any manner concerned in executing, either by himself or deputy, or by any other person or persons in trust for him, or for his use and benefit, any such office or employment as aforesaid, such person shall be and is hereby declared to be incapable of sitting, voting, or acting in any manner as a member of the Commons House of Parliament in such Parliament."

No officer to vote or interfere in elections for members of Parliament under a penalty of 500*l.* and incapacity of holding office (*a*).

Sect. 9. "That no commissioner or assistant commissioner of Excise, or commissioner of appeal under this act, *or any officer of Excise* (*b*), or person employed in the charging, collecting, or managing of any part of the revenue of Excise, or in comptrolling or auditing the accounts thereof, shall be capable of giving his vote for the election of any person to serve in Parliament; and if any commissioner or assistant commissioner, or commissioner of appeal, or any officer or other person hereby made incapable of voting as aforesaid, shall nevertheless presume to give his vote during the time he shall hold, or within two calendar months next after he shall have ceased to hold or execute any office or employment as aforesaid, such vote so given shall be held null and void to all intents and purposes whatsoever; and every such commissioner, assistant commissioner, commissioner of appeal, officer, and person as aforesaid, who shall give any such vote, or who shall, by word, message or writing, or in any other manner whatsoever, endeavour to persuade any elector to give, or to dissuade any elector from giving his vote for the election of any person to serve in Parliament, shall for every such offence (the same being proved by two or more credible witnesses upon

(*a*) *See* tit. "*Parliament.*"

(*b*) It was held that the words "officer," or "officers of Excise," in the 57 Geo. III. c. 123, s. 13, are general, and apply to any officer of Excise, &c. *The Attorney General* v. *Slee, M'Clel. Rep.* 567; 1 *Chitty's Col. Stat.* 286, *note* (*a*).

(2). *Of the commissioners, &c.*

7 & 8 Geo. 4, c. 53.

oath) forfeit and lose the sum of five hundred pounds, one moiety whereof shall be paid to the informer, and the other moiety thereof to the poor of the parish in which such offence shall have been committed and such penalty incurred; and every such penalty shall and may be recovered by any person who shall, within twelve months next after such penalty shall have been incurred, inform or sue for the same, by action of debt, bill, plaint, or information in any of his Majesty's courts of record at Westminster, Edinburgh, or Dublin, in which no essoign, protection, privilege, or wager of law, nor more than one imparlance, shall be allowed; and every person convicted of any such offence shall be and is hereby declared to be incapable of ever holding or executing any office or place of trust whatsoever under his Majesty, his heirs or successors: Provided always, that nothing herein contained shall extend, or be deemed or construed to extend, to repeal or to alter any of the laws touching or in anywise relating to election in any part of the United Kingdom, excepting so far as is hereby expressly provided."

Not to alter laws of election except as here provided.

No person holding any office of Excise shall deal in goods subject to Excise laws.

Sect. 10. "That no officer of Excise or person employed in the collection or management of or accounting for the revenue of Excise, or any part thereof (except the keeper of an office of Excise as hereinafter mentioned), shall, whilst he shall be such officer, or so employed as aforesaid, deal or trade in any goods or commodities subject to any duty of Excise, or shall carry on or be concerned in any trade or business which is or shall be under or subject to any law or laws of Excise, upon pain of forfeiting for such offence, on due conviction thereof, his office or employment, and being by such conviction rendered incapable of ever holding any office, trust, or employment in or relating to the revenue of Excise."

Commissioners and officers of Excise exempted from serving in public offices or militia.

Sect. 11. "That no commissioner or assistant commissioner of Excise, or officer of Excise, or person employed in the collection or management of or accounting for the revenue of Excise, or any part thereof, shall, during the time of his acting as such commissioner or assistant commissioner or officer, or being so employed as aforesaid, be compelled to serve as a mayor or sheriff, or in any corporate or parochial or other public office or employment, or to serve on any jury or inquest, or in the militia; any law, usage, or custom to the contrary thereof notwithstanding."

Penalty on persons employed in Excise taking money, &c. (a).

Sect. 12. "That if any commissioner or assistant commissioner of Excise, or commissioner of appeal under this act, or any officer of Excise, or person employed in the collection or management of or accounting for the revenue of Exise, or any part thereof, shall directly or indirectly ask or demand or take or receive any sum of money or other recompence or reward whatsoever, or any promise or security for any sum of money, or other recompence or reward whatsoever, or shall make, or enter into, or acquiesce in any collusive agreement with any person or persons to do or to conceal or to connive at any act or thing whereby any of the provisions of this act, or any other act or acts of Parliament relating to the revenue of Excise, shall or may be evaded or broken, or the said revenue defrauded, or to do or perform, or to permit or suffer to be done or performed, any act or thing contrary to the duty of such commissioner or assistant commissioner of Excise, or commissioner of appeal, or such officer or person so employed as aforesaid, or to neglect or forbear or omit to do or perform any act or thing belonging or appertaining to the duty of such commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, every such commissioner or assistant commis-

(a) *Assumpsit* will not lie to recover money promised to an officer for doing his duty. *Cowp.* 805. Money had and received lies against Custom-house officer who has taken extortionate fees. *Stevenson* v. *Mortimer*, *Cowp.* 805.

(2). *Of the commissioners, &c.*

7 & 8 Geo. 4, c. 53.

Penalty on person offering reward, &c. 500*l.*

sioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, and so offending, shall for every such offence forfeit and lose the sum of five hundred pounds, and being thereof duly convicted, shall be thereby rendered incapable of thereafter serving his Majesty in any office or employment whatsoever; and if any person shall directly or indirectly give or offer or promise to give to such commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, any sum of money or other recompence or reward whatsoever, or any security for any sum of money or other recompence or reward whatsoever, or shall propose or make or enter into any collusive agreement with such commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, in order to corrupt and prevail upon such commissioner or assistant commissioner of Excise, or commissioner of appeal, or such officer or person so employed as aforesaid, to do or to conceal or to connive at any act or thing whereby any of the provisions of this act, or any other act or acts of Parliament relating to the revenue of Excise, shall or may be evaded or broken, or the said revenue defrauded, or to do or perform, or to permit or suffer to be done or performed, any act or thing contrary to the duty of such commissioner or assistant commissioner of Excise, or commissioner of appeal, or such officer or person so employed as aforesaid, or to neglect or forbear or omit to do or perform any act or thing belonging or appertaining to the duty of such commissioner or assistant commissioner of Excise, or commissioner of appeal, or such officer or person so employed as aforesaid, every person so offending shall for every such offence (whether such sum of money or other recompence or reward, or promise or security for the same, or such agreement, be received, accepted, entered into, acquiesced in, or performed, or not) forfeit and lose the sum of five hundred pounds."

Indemnification of either party first giving information against the other.

Sect. 13 provides and enacts, "That in case any commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, who shall have directly or indirectly asked or demanded, or taken or received, any sum of money or other recompence or reward whatsoever, or any promise or security for the same, or who shall have made or entered into or acquiesced in any collusive agreement as aforesaid, shall, before any complaint or information shall have been made or given, or any proceeding had against him for committing such offence, give information of the gift or offer of, or promise to give, any sum of money or other recompence or reward whatsoever, or any security for the same, or of any collusive agreement proposed or made or entered into as aforesaid, and proceedings being thereupon instituted, such penalty as aforesaid shall be recovered against the person concerning whom such information shall have been given; or in case any person who shall have directly or indirectly given or offered, or promised to give, any sum of money, or other recompence or reward whatsoever, or security for the same, or who shall have proposed or made or entered into any collusive agreement as aforesaid, shall, before any complaint or information shall have been made or given, or any proceedings had against him or her for having committed such offence, give information of the asking or demanding, or of the taking or receiving as aforesaid, of any sum of money, or other recompence or reward whatsoever, or any promise or security for the same, or of any collusive agreement made or entered into or acquiesced in as aforesaid, by any such commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, and proceedings being thereupon instituted, such penalty as aforesaid shall be recovered against the commissioner or assistant commissioner of Excise, or commissioner of appeal, or officer or person so employed as aforesaid, concerning whom such information as aforesaid shall have been given; then and in either of such cases the party so first giving

(2.) *Of the commissioners, &c.*

information as aforesaid shall be exempted from and indemnified against the penalties and disabilities imposed on such party for such offence by this act."

7 & 8 Geo. 4, c. 53. Board of commissioners of Excise to sit at chief office of Excise in London.

Sect. 14. "That the board of commissioners of Excise shall sit at the chief office of Excise established in London, and directed and appointed to be called the Excise office by an act passed in the eighth year of the reign of his late Majesty King George the Third (amongst other things), for carrying into execution an agreement made for the purchase of Gresham College and the ground and buildings thereunto belonging, and for vesting the same unalienably in the Crown, for the purpose of erecting and building an Excise office there; or at such other place within the limits hereinafter mentioned, as the lord high treasurer, or any three or more of the commissioners of the Treasury, shall in that behalf appoint; and that in all cases, and to and for all intents and purposes whatsoever, the chief office of Excise shall be deemed and taken to be the office of Excise, unto which all other offices of Excise within the United Kingdom shall be subordinate and accountable; and that all parts of the cities of London and Westminster, the borough of Southwark, and the several suburbs thereof, and parishes within the weekly bills of mortality, together with the parishes of St. Mary-le-bone and St. Pancras in the county of Middlesex, shall be within and under and subject to the immediate jurisdiction of such chief office of Excise."

Limits thereof.

Offices of Excise to be held in Edinburgh and Dublin; and commissioners to appoint persons to hold offices of Excise in the market towns, and in certain towns in Anglesea.

Sect. 15. "That an office of Excise shall be held and kept in Edinburgh and in Dublin respectively; and the commissioners of Excise shall appoint, under their hands and seals, or under the hands and seals of any four of them, such person as they think needful in Edinburgh and in Dublin respectively, and in each such respective town throughout the United Kingdom in which a market is or may be legally held every week, or oftener, throughout the year, as they may think fit, and in the several towns of Holyhead, Llangefni, and Llanerchthmeth, in addition to the market town of Beaumaris, in the county of Anglesea, to hold and keep therein, and in some known and public place thereof, an office of Excise, at which all entries shall be made (other than the entry required to be made of any building, place, vessel, or utensil for the purpose of carrying on trade or business), and at which all duties of Excise shall be received, and all other matters and things relating thereto shall be performed, as is or shall be directed by this act, or any other act or acts of Parliament relating to the revenue of Excise; and the person respectively so appointed (the place where he or she intends to hold or keep such office being immediately after such appointment published in full and open market, or otherwise publicly made known) shall attend at and keep open such office during such times as are in this act or may hereafter be in that behalf directed."

4 Vict. c. 20. None but such as were market towns at time of passing of 7 & 8 Geo 4, c. 53, to be market towns within that act.

And by the 4 Vict. c. 20, s. 1, "The commissioners of Excise shall not be compellable to appoint any office of Excise to be held and kept in any town for or by reason of a weekly or other market having been established in such town, by authority of Parliament or otherwise, since the passing of the said recited act of the eighth year of the reign of his said Majesty King George the Fourth; and no town shall be deemed or taken to be a market town, at which duties of Excise are to be received, or out of or beyond which persons are not to be compelled to travel for payment of such duties, other than such as were market towns at the time of the passing of the said recited act: provided always, that it shall be lawful for the commissioners of Excise to appoint an Excise office to be held and kept, and duties of Excise to be collected and received, in any other town or place, as well within the limits of the chief office of Excise as elsewhere, if they shall see fit."

7 & 8 Geo. 4, c 53. Regulation of office-hours, and appointment of certain holidays.

By the 7 & 8 Geo. IV. c. 53, s. 16—"That the chief office of Excise in London, and the offices of Excise in Edinburgh and Dublin respectively, shall be kept open from eight of the clock in the morning until

(2). *Of the commissioners, &c.*

7 & 8 Geo. 4, c 53.

three of the clock in the afternoon; and that the office of Excise in every other place shall be kept open from eight of the clock in the morning until two of the clock in the afternoon, for the transaction of business, or from or to such other hours as shall from time to time be directed by the lord high treasurer, or any three or more of the commissioners of the Treasury; and that no holidays whatever shall be permitted or allowed to be kept at the said chief office in London, or the offices in Edinburgh and Dublin respectively, or at any other office of Excise, except Christmas-day and Good Friday in every year, and any days which are or shall be appointed by his Majesty's proclamation for the purpose of a general fast or thanksgiving, the anniversaries of the restoration of his Majesty King Charles the Second, and of the coronation of his Majesty, and the birthdays of their Majesties and of the Prince of Wales, and their respective successors, and also such days as are or shall be appointed by any warrant issued for that purpose by the lord high treasurer, or any three or more of the commissioners of the Treasury; but that all business at the said offices shall be carried on and performed on every day throughout the year, Sundays and the days before mentioned only excepted; any law, custom, or usage to the contrary notwithstanding. Provided always, that it shall and may be lawful for the commissioners of Excise, and for the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, to direct and enforce the attendance of any officer, clerk, or other person employed in the revenue of Excise, for any time or at any place when or where the same shall in the judgment of such commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, be required for the better discharge of the official duties of any such officer, clerk, or other person."

Proof of keeping an office or acting as officer to be sufficient till contrary evidence produced.

Sect. 17. "That if, upon the trial of any indictment, information, action, suit, or prosecution whatsoever, or in any other legal or judicial proceeding, any question shall be made, or any doubt or dispute shall arise, touching or concerning the keeping of any office of Excise, or whether any person is or was a commissioner or assistant commissioner of Excise, or a collector or other officer of Excise, or commissioned or appointed to act as such, evidence of the actual keeping of such office of Excise, or that such person is, or at the time in question was reputed to be, such commissioner or assistant commissioner, or such collector or other officer, or does or did then act as such commissioner or assistant commissioner, or as such collector or other officer so commissioned and appointed (as the case may require), shall in every such case be admitted and be deemed and taken to be respectively sufficient and legal proof of such facts respectively, without producing or proving the particular commission, appointment, or other authority, whereby such person is or was commissioned or appointed to be such commissioner or assistant commissioner, or such collector or other officer as aforesaid, unless by other evidence the contrary be made to appear; any law, custom, or usage to the contrary thereof notwithstanding."

Salaries, &c not liable to deductions, nor assignable, nor subject to be taken in execution (a).

Sect. 121. "That no salary or sum of money granted or allowed to any commissioners, assistant commissioners, officer, or other person appointed or to be appointed to any office, or employed or to be employed in or about the collection, receipt, or management of the revenue of Excise, or as or by way of compensation for past services, upon the superannuation or retirement of such commissioner, assistant commissioner, officer, or other person, or otherwise, shall, after the commencement of this act, be wholly or in part assignable or transferable by any such commissioner, assistant commissioner, officer, or other person in manner

(a) As to allowances to superannuated officers, see 49 Geo. III. c. 96.

(2). *Of the commissioners, &c.*

7 & 8 Geo. 4, c. 53.

whatsoever, or subject or liable to be seized or taken under or by virtue of any writ of attachment or execution, or any other process whatsoever, before the same shall have been actually paid by the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, or by the person or persons employed or directed by them respectively for that purpose, to or for the use of such commissioner, assistant commissioner, officer, or other person, to whom the same shall have been granted or allowed; any thing in this act, or any other act or acts of Parliament, or any law, custom, or usage to the contrary thereof notwithstanding."

Commissioners in Scotland and Ireland, and collectors or receivers of money, to keep distinct accounts thereof.

Sect. 44. "That the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, and every collector, receiver, and other person throughout the United Kingdom, who shall be entrusted with the collection, receipt, custody, or management of any part of the revenue of Excise, shall keep and render such separate and distinct accounts, and in such manner and form, as shall from time to time be directed by the commissioners of Excise, of all and every duty and duties, penalty and penalties, sum and sums of money collected, had, or received by him or them, or intrusted to his or their care or custody, and of all and every balance and balances of money in his or their hands, or under his or their control and management respectively; and if any commissioner or assistant commissioner of Excise in Scotland or Ireland, or if any such collector, receiver, or other person in any part of the United Kingdon, shall neglect or omit to keep and render such accounts as aforesaid, or shall knowingly render or furnish false accounts of or relating to any duty or penalty, or sum of money collected, had, or received, or to be collected, had, or received by him or them, or intrusted to his or their care or custody, or of any balance of money in his or their hands, or under his or their control and management, every such commissioner, assistant commissioner, collector, receiver, or other person so offending, and being thereof duly convicted, shall be adjudged guilty of a misdemeanor, and shall suffer the punishment of fine and imprisonment, at the discretion of the court in which such offender shall be prosecuted for such offence, and shall by such conviction be rendered for ever incapable of holding or enjoying any office under the Crown."

Persons knowingly furnishing false accounts to be punished by fine and imprisonment, and rendered incapable of holding office.

Collectors to receive, pay, apply, and remit duties, as ordered by commissioners.

Sect. 45. "That the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland respectively, and every collector, receiver, or other person throughout the United Kingdom, intrusted with the collection, receipt, custody, or management of any part of the revenue of Excise, shall from time to time collect, receive, apply, pay, transfer, and remit all and every duty and duties, penalty and penalties, sum and sums and balance and balances of money, which shall at any time be intrusted to his or their care or custody, or come into his or their hands, or be under his or their control and management respectively, in such manner and form and at such times as the commismissioners of Excise shall in that behalf from time to time order and direct; and if any commissioner or assistant commissioner of Excise in Scotland or Ireland, or if any such collector, receiver, or other person in any part of the United Kingdom, shall neglect or omit so to collect, receive, apply, pay, transfer, or remit as aforesaid, any such duty or penalty, or sum or balance of money, or any security for money, in his or their hands, or shall detain or misapply the same, every such commissioner, assistant commissioner, collector, receiver, or other person so offending, shall forfeit his office or employment, and shall be liable to pay, over and above the penalty of any bond which he may have entered into in respect of his office or employment, treble the amount of such duty or penalty, or sum or balance of money, or security for money, neglected or omitted so to be collected, received,

applied, paid, transferred, or remitted as aforesaid, or so detained or misapplied."

(2). *Of the commissioners, &c.*

7 & 8 Geo. 4, c. 53.

Commissioners to collect and keep accounts of duties charged or received, and of payments made, and render same to treasury when required.

Sect. 46. "That the commissioners of Excise shall and they are hereby required to collect and cause to be collected all and every the duties and every part of the revenue of Excise, and to keep separate and distinct accounts thereof respectively at the chief office of Excise in London; and shall set forth in such accounts the amounts respectively charged, and collected, and received, and remaining in arrear of each of such duties, and other parts respectively of the said revenue, and of the several payments made or allowed by such commissioners for or in respect of such duties and other parts of the said revenue respectively, and of the expenses respectively of the collection or management of the revenue of Excise, and of all other payments and expenses made or incurred on any other account whatsoever; and the said commissioners of Excise shall render and furnish such accounts as aforesaid to the lord high treasurer, or the commissioners of the Treasury, when and so often and in such manner and form as the same shall be directed or required by the lord high treasurer, or any three or more of the commissioners of the Treasury."

Sect. 47, That the commissioners of Excise shall daily pay over revenue of Excise to the receiver general, is repealed by the 4 & 5 Vict. c. 20, s. 8.

Act not to affect pensions payable by commissioners of Excise.

Sect. 48 provides and enacts "That nothing in this act contained shall extend or be construed to extend to make void, alter, or prejudice any disposition, appropriation, appointment, matter, or thing whatsoever, relative to the regular and usual payment of any pension or annuity charged and made payable to any person or persons in pursuance of any act or acts of Parliament, or by virtue of any grants or letters patent made or granted by any of his Majesty's royal predecessors, kings or queens of this realm, but that the same dispositions, appropriations, and appointments shall continue, be in force and take effect in the payment of all and every the annuities and pensions payable by the commissioners or receivers-general of Excise, in the same manner and at the same time and times that the said annuities and pensions have been usually paid before the commencement of this act."

4 & 5 Will. 4, c. 51.

Commissioners and officers of Excise not to be required to take parish apprentices.

By the 4 & 5 Will. IV. c. 51, s. 3, "No commissioner of Excise or officer of Excise, or person employed in the collection or management of, or recovering or accounting for, controlling or auditing the revenue of Excise, or any part thereof, shall during the time of his acting as such commissioner or officer, or being so employed as aforesaid, be compelled to receive any parish apprentice, or take any child as an apprentice or servant, nor be subject to any penalty for refusing to execute any indenture for binding to him any person as an apprentice or servant, any law or statute to the contrary notwithstanding."

4 Vict. c. 20.

Acts required to be done by surveyors or general surveyors within limits of chief office of Excise may be done by collectors or supervisors.

By the 4 Vict. c. 20, s. 2, "Any survey, inspection, charge, return, or demand directed by any act or acts relating to the revenue of Excise to be made, or any act or matter so directed or required to be done by any surveyor or general surveyor of Excise within the limits of the chief office of Excise, may be made or done by any collector or supervisor of Excise within the said limits; and every collector, supervisor, and other officer appointed within the said limits shall have and exercise (subject to the orders and directions of the commissioners of excise) all the same powers and authorities in charging, collecting, receiving, paying, and securing the revenue of Excise within the said limits as are given to and are exercised by any collector, supervisor, or officer of Excise elsewhere."

Bonds not to be required from officers who do not

Sect. 3—Reciting that by the said recited act of the eighth year of the reign of his said late Majesty king George the Fourth, the commissioners

(2). *Of the commissioners, &c.*

4 & 5 Vict. c. 20. collect or receive money.

of Excise are authorized and required to appoint collectors and other officers, and accomptants, clerks, and assistants for collecting, receiving, managing, and accounting for the revenue of Excise, taking, in the name of his Majesty, from them and every of them, sufficient security for the due performance of the respective duties committed to their charge—enacts, "that the commissioners of Excise shall not be required or obliged to take (if they shall see fit not to call for the same) any bond or other security for the due or faithful discharge of his duty from any officer, accomptant, clerk, or assistant appointed by them, who shall not, or by virtue of his office, be authorized or empowered to collect or receive any duty or duties of Excise, or to take or have in his custody or possession, or pay, any money or monies arising out of the said duties, or belonging to her Majesty, any thing in the said recited act to the contrary notwithstanding."

Keepers of Excise offices declared not to be officers of Excise.

Sect. 4—Reciting that doubts having been raised whether the keeper of an excise-office is an officer of Excise within the meaning of the said recited acts—declares and enacts, "that no person appointed by the commissioners of Excise, under the powers and authorities of the said recited act of the eighth year of the reign of his said Majesty King George the Fourth, or of this act, to hold and keep an office of Excise, shall, on account or by reason of such appointment, be deemed or taken to be an officer of Excise, nor shall as such be subject to any of the restrictions or entitled to any of the exemptions to which officers of Excise are, under the said acts recited in the preamble of this act, or either of them, or under any other act or acts subject or entitled."

As to informations, &c. before commissioners for penalties, their powers, &c., see *post*, Sections 9 and 11.

Observations, decisions, &c.

The collections, &c.

The kingdom of England and Wales (exclusive of the bills of mortality) is divided into upwards of fifty *collections;* some called by names of particular counties; others by the names of great towns, where one county is divided into several collections, or where a collection comprehends the contiguous parts of several counties. Every collection is subdivided into *districts*, within each of which there is a *supervisor;* and each district is parcelled into *out-rides* and *foot-walks*, within each of which there is a *gauger* or surveying officer. (*Gilb. Exch.* Append. 297, 298).

Gaugers, commonly called *Excisemen.*

By stat. 12 Car. II. c. 24, s. 33, "the commissioners or sub-commissioners in their respective circuits and divisions shall constitute under their hands and seals such and so many *gaugers* as they shall find needful."

Certificate for obtaining an order to be instructed in the Excise.

In order to which, he who would be made an Excise officer must procure a certificate that he is above twenty-one and under thirty years of age; that he understands the first four rules of arithmetic; that he is of the communion of the Church of England; how he has been employed, or what business he has followed; that he is not incumbered with debts; whether single or married; and if married, how many children he has, for if he has above two he cannot (by the rules of the office) be admitted. (*Gilb. Exch.* Append. 293).

Security to be proposed.

He must also nominate two persons to be his sureties; and it must be certified that they are of sufficient ability, and that the said certificate is of his own handwriting. Such certificate, written by him, must be signed by the supervisor of Excise where the party applying lives. (*Gilb. Exch.* Append. 293.) His chief duty is to take accounts and survey what articles are excisable. (*Hugh. on Excise*, 20).

By the 4 Vict. c. 20, s. 3, bonds are not to be required from officers who do not collect or receive money.

Affidavit.

At the bottom of the certificate must be his affidavit, that neither he

nor any one else to his knowledge hath directly or indirectly given or promised to give any treat, fee, gratuity, or reward for his obtaining or endeavouring to obtain an order for his being instructed. (*Id.* 294.)

(2). *Of the commissioners, &c.*

When an order for instruction is granted, it is directed to an experienced officer, who receives such person as his pupil; and the like books as officers have being delivered to such pupil, he goes with and attends the officer, who instructs him and takes surveys, and in his own books makes the like entries as if he were an officer, until the instructor certifies that he is fully instructed. (*Id.*)

Order for instruction, and certificate thereon.

After he is thus certified for, and until he is employed, he is called an *expectant*, being to wait till a vacancy happens. (*Id.*)

Expectant.

The business of the *supervisor* is, to be continually surveying the houses and places of the persons within his district liable to duties; and to observe and see whether the officers duly make their surveys, and make due entries thereof in their books and in their *specimen* papers: and every supervisor is in his own book to enter what he himself does each day and part thereof; and also to set down the behaviour, good or bad, the diligence or negligence of the several officers of his district; and at the end of every six weeks to draw out a diary of every day's business, and of the remarks made each day of the several officers in his district, and to transmit such diary at the end of every six weeks to the chief office. (*Gilb. Exch.* App. 303, 304). See form, &c. of specimen, *post*, 668.

Supervisor

Is to make diaries and transmit them to the chief office.

Each commissioner takes and peruses a proportion of these diaries; and when he meets with any remarkable complaint against any officer, he communicates it to the rest; who thereupon come to an agreement, either to *admonish*, *reprimand*, *reduce*, or *discharge*. For small faults, officers are admonished; for great ones, reprimanded; for greater, reduced; but for the greatest they are discharged. The commissioner who peruses the diary writes in the margin *admonish* or *reprimand*, &c. as is agreed on by the board. (*Gilb. Exch.* App. 304).

The duty and authority of the *commissioners* in reprimanding and punishing officers guilty of neglect.

These diaries, after having been thus written upon, are delivered to the clerk of the diaries, who, in a book called the *reprimand-book*, places the admonitions, reprimands, &c. to each officer's account, and writes every offender word thereof; which reprimand-book is resorted to, upon discovering new faults; and if it be there found that the officer has before been admonished and reprimanded so often that there are no hopes of his amending, he then is discharged. The said book is likewise resorted to when application is made for advancing or preferring an officer into a better post. Frequent admonitions or reprimands are a bar to preferment, unless they are of old standing; but if for three years last he stands pretty clear of admonitions and reprimands, those of elder date are not much regarded. (*Gilb. Exch.* App. 305).

Business of the *clerk of the diaries*, with the form and use of the reprimand-book.

The *collector's* business is, every six weeks, to go his rounds; and in the intervals of rounds he is to be assisting in prosecuting offenders before justices: he is also to peruse the supervisors' diaries, and where he finds an officer complained of, is to examine him and the supervisor, and, having heard both, is in the margin to write his opinion of each fact: he is also to have an eye how the supervisors and officers of his collection perform their duties; and from the vouchers he transcribes into his book the charge on each particular person in his collection. (*Id.* 305, 306).

The business of collectors.

For faults gaugers are *reduced* either to be only assistants, or from foot-walks or to out-rides. Supervisors are reduced to be again only gaugers; and collectors are reduced to be supervisors. (*Id.*)

The manner of reducing officers for faults.

In some instances, discharged officers, after having for a competent time been thereby kept out of pay, are again restored; but if twice discharged are never again restored, unless one of the discharges appears to have been occasioned upon a misrepresentation of the case. (*Id.* 307).

The manner of discharging and restoring officers

(3). *Receiver General, &c.*

(3). Of the Receiver-General, Comptroller, and Auditor.

7 & 8 Geo. 4, c. 53.

The 7 & 8 Geo. IV. c. 53, s. 49, as to the appointment of a comptroller and an auditor of Excise for the United Kingdom, is repealed by the 4 & 5 Vict. c. 20, as also are the following sections of that act, viz.:

Sect. 50. As to monies, &c., received by the receiver general of the Excise, to be paid into the bank forthwith, to the account of the receiver general of Excise.

Sect. 51. As to what sums may be retained by the receiver general in his hands for the payment of ordinary and daily demands.

Sect. 52. As to the bank book to be kept and compared by the comptroller of the cash, and any default therein to be stated to the commissioners.

Sect. 53. As to the mode in which payments are to be made into the exchequer.

4 & 5 Vict. c. 20.

The 4 & 5 Vict. c. 20, after repealing the above sections, proceeds to enact by

Lords of the Treasury to appoint a comptroller and auditor of Excise.

Sect. 14. "That it shall be lawful for the lord high treasurer, or any three or more of the commissioners of the Treasury, under his hand and seal or under their hands and seals, to appoint a fit and proper person to be the comptroller and auditor of Excise on behalf of her Majesty, her heirs and successors, for the purpose of comptrolling and auditing all accounts of and belonging to the whole revenue of Excise arising in and under the management of the commissioners of Excise throughout the United Kingdom of Great Britain and Ireland, with such salary, payable by the commissioners of Excise out of the revenue of Excise, as the lord high treasurer or the commissioners of the Treasury may in that behalf order and direct; and such comptroller and auditor shall in all respects be subject to such rules, orders, regulations, and directions as the lord high treasurer or the commissioners of the Treasury shall from time to time make or prescribe, and transmit to the said comptroller and auditor, for his direction and guidance in his said office: provided always, that any appointment of any person as such comptroller and auditor made before the passing of this act shall be good and valid, and shall continue in force as if the same had been afterwards made under and by virtue of the authority of this act."

All the revenue of Excise to be paid over to receiver general.

Sect. 15. "That all money and all bills of exchange, promissory notes, drafts, checks, accountable receipts, and orders for the payment of money, which shall from time to time be collected or received or paid, for or on account of the duties or revenue of Excise, shall (except only the necessary charges of collecting, receiving, levying, managing, paying, and accounting for the same, and all other payments legally paid thereout) be paid, remitted, and delivered, under the orders and directions of the commissioners of Excise, into the hands of the receiver general of Excise, at the chief office of Excise, or in such other manner as the lord high treasurer or commissioners of the Treasury shall from time to time order, direct, or appoint; and all such bills of exchange, promissory notes, drafts, checks, accountable receipts, and orders for the payment of money, remitted or forwarded to the chief office of Excise, shall be made and drawn in favour of the said receiver general, who shall, by himself, or his clerk duly authorized by him for that purpose, and for whose conduct he shall be answerable, endorse the same, before the payment and delivery thereof into the Bank of England as hereinafter directed."

All monies, bills, notes, &c. to be paid by receiver-general of Excise into Bank of England.

Sect. 16, "That all monies, bills, notes, drafts, checks, accountable receipts, or orders for payment of money, received by or coming into the hands of the receiver general of Excise, shall be paid by him into the hands of the governor and company of the Bank of England, for which monies, bills, notes, drafts, checks, receipts, and orders

the entry in the book hereinafter mentioned shall be a sufficient discharge; and all such monies, bills, notes, drafts, checks, receipts, and orders so paid to the governor and company of the Bank of England shall be placed to an account raised in the books of the said governor and company, and intituled 'The Account of the Public Monies of the Receiver General of Excise,' inserting the name of such receiver general for the time being; and all such payments shall be made at such times and in such manner, and under such rules, orders and regulations, and such accounts thereof shall be kept, as the lord high treasurer or the commissioners of the Treasury, or the commissioners of Excise, shall from time to time direct and prescribe in that behalf."

(3). *Receiver General, &c.*

4 & 5 Vict. c. 20.

Sect. 17 provides and enacts, "That it shall be lawful for the said receiver general to pay, out of the monies received by him, the ordinary and daily payments required to be made by orders of the commissioners of Excise or otherwise, and upon any special occasion to retain in his hands, at the close of any day, such sum as he shall be authorized or directed by the commissioners of Excise to retain."

Payments for ordinary purposes may be made, and money retained upon special occasions.

Sect. 18. "That the governor and company of the Bank of England, or some person duly authorized on their behalf, shall, upon every occasion of receiving any money, bill, note, draft, check, accountable receipt, or order for payment of money, from the receiver general, make an entry of the money, and of every such bill, note, draft, check, receipt, and order for money so received, in a book to be provided by the said governor and company, with the approbation of and to be kept in such form as shall be directed by the lord high treasurer or commissioners of the Treasury, and sent for that purpose by such receiver general; and such book shall, forthwith after the making of such entry, be re-delivered to the person making such payment, and shall be inspected daily after its return by the proper check officer or officers at the chief office of Excise, charged with such duty by the lord high treasurer or commissioners of the Treasury, or by the commissioners of Excise, who shall examine and compare the same with the Excise accounts, for the purpose of seeing that the receiver general constantly pays into the bank all the money, bills, notes, drafts, checks, receipts, and orders for payment of money as required under the provisions of this act; and any default which may be discovered in that behalf shall forthwith be immediately reported by such check officer or officers to the commissioners of Excise."

All monies, bills, notes, &c paid into Bank of England by receiver general of excise to be forthwith entered in book by officer of Bank, and book to be daily inspected by check officers of Excise.

Sect. 19. "That all money placed to the account of the receiver general of Excise in the Bank of England shall be written off, transferred, and paid to the receipt and account of the Exchequer, under the provisions and regulations of an act passed in the fourth year of the reign of his late Majesty King William the Fourth, intituled 'An Act to regulate the Office of the Receipt of his Majesty's Exchequer at Westminster,' and under such regulations and directions as the lord high treasurer or commissioners of the Treasury shall in that behalf prescribe; and it shall not be lawful for the governor and company of the Bank of England to pay or transfer, from the account of the receiver general, any part of the money so deposited and placed to such account, otherwise than into the Exchequer in manner aforesaid, or in payment of such check or checks as such receiver general, or his clerk duly authorized by him for that purpose, and for whose conduct he shall be answerable, may be authorized to draw, under the sanction and rules and regulations of the lord high treasurer or commissioners of the Treasury, such checks being first duly countersigned by the proper check officers, or to deliver any bill of exchange, promissory note, draft, check, accountable receipt, or order for the payment of money, save and except to her Majesty's solicitor of Excise in England, or his clerk, upon his application for the same, countersigned by the receiver general or his clerk, for the sole purpose of prosecuting an extent for the

Money to be paid over to Exchequer under provisions of 4 & 5 Will. 4, c. 15, and the orders of Treasury.

(3). *Receiver General, &c.*

4 & 5 Vict. c. 20.

recovery of the money for which any such bill of exchange, promissory note, draft, check, order, or receipt for the payment of money shall have been given; and in such case the commissioners of Excise shall be immediately acquainted therewith, if sitting, by such solicitor and receiver general, or if not sitting, then at the time of their next assembling; and every such delivery shall be entered in the bank book of the receiver general, to be kept as hereinbefore directed."

Commissioners of Excise empowered to appoint check officers, and all persons so appointed or directed by Treasury to be deemed proper check officers.

Sect. 20. "That it shall be lawful for the commissioners of Excise to appoint and direct any accomptants or officers whom they shall see fit to examine and check the said bank book of the receiver general, or to countersign any checks or other documents of the receiver general of Excise; and every person so appointed or directed, and the comptroller or other officer directed by the lord high treasurer or commissioners of the Treasury to perform the like duties, shall be and shall be deemed and taken to be the proper check officers within the meaning of this act: Provided always, that where any check, draft, write-off, or other document required to be countersigned by any such check officer, is to be acted on by the governor and company of the Bank of England, the nomination and appointment and the signature of such check officer shall be first made known to the said governor and company."

Excise duties in Ireland to continue to be paid into Bank of Ireland, unless Treasury shall otherwise order.

Sect. 21 provides and enacts, "That the duties of Excise arising, collected, and paid in Ireland shall, unless the lord high treasurer or commissioners of the Treasury shall otherwise order or direct, continue to be paid into the Bank of Ireland to the account of her Majesty's Exchequer, in the same manner as the same are now paid in under the powers and authorities of an act passed in the seventh year of the reign of his late Majesty King William the Fourth, intituled 'An Act for the Regulation of the Offices of Vice Treasurer and Teller of the Exchequer in Ireland,' and the other acts therein recited, any thing in this act contained to the contrary notwithstanding."

Accountant general of Excise to prepare and pass an account annually before comptroller and auditor of excise.

Sect. 22. "That the Accountant General of Excise shall annually prepare and pass, before the comptroller and auditor of Excise, accounts of the produce of the revenue of Excise under the care and management of the commissioners of Excise, and of the payments thereout, for England, Scotland, and Ireland; and such accounts shall contain the amount charged for each of the several duties of Excise, and the particulars of the payments made out of the revenue of Excise, and shall be substituted for the account now rendered and sworn to by the commissioners of Excise before a baron of her Majesty's Court of Exchequer, or shall be in such form, and contain such particulars, as the lord high treasurer or commissioners of the Treasury shall direct; and such accounts shall be made up to the fifth day of January in every year, or to such other period in every year as the lord high treasurer or commissioners of the Treasury shall appoint, and shall be delivered by the said accountant general to the said comptroller and auditor within such time as shall be limited by the lord high treasurer or commissioners of the Treasury for that purpose; and from and after the passing of this act the commissioners of Excise shall be discharged from being public accomptants, and shall not be required or called upon to render or pass or swear to, as heretofore, any account of the revenue of Excise under their care and management: Provided always, that nothing herein contained shall be held or construed to extend to exempt or discharge the said commissioners of Excise from rendering and furnishing to the lord high treasurer or commissioners of the Treasury any account or accounts which may from to time be called for or required from them by the said lord high treasurer or commissioners of the Treasury."

7 & 8 Geo. 4, c. 53.

On death or removal of receiver general, balance to be transferred

By the 7 & 8 Geo. IV. c. 53, s. 54—"That upon the death, resignation, or removal of every receiver-general of Excise, the balance of cash for which such receiver-general shall at that time have credit in his account as such receiver-general, with the governor and company of the

Bank of England, shall immediately upon a successor being appointed to the said office of receiver-general vest in such successor, in trust for the purposes aforesaid, and shall be forthwith transferred, carried over, and placed by the governor and company of the bank of England to the account of such successor, to be applied in such manner as aforesaid."

(3). *Receiver General, &c.*

7 & 8 Geo. 4, c. 53.

to account of his successor.

Sect. 55. "That the receiver-general of Excise shall keep the account with the Bank of all money issued on his account as aforesaid; and such receiver-general, observing the rules and regulations by this act prescribed, shall not be answerable for any money which he shall have so paid or caused to be paid into the bank of England; but the governor and company of the Bank of England shall be answerable for all money, bills, notes, drafts, checks, and orders which shall be actually received by them from and on account of such receiver-general as aforesaid, except such as may have been delivered out for the purpose of prosecuting an extent as aforesaid, and may not have been returned into the Bank of England."

Receiver general to keep account, and not to be answerable for any money actually paid into Bank.

Sect. 56. "That if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or shall knowingly and wilfully aid or assist in forging or counterfeiting, the name or handwriting of any receiver-general of Excise, or of any Excise comptroller of the cash as aforesaid, or of any of the persons duly authorized as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money, bills, notes, drafts, checks, or orders for the payment of money, in the hands or custody of the governor and company of the Bank of England on account of such receiver-general as aforesaid; or if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or shall knowingly and wilfully aid or assist in the forging or counterfeiting, of any draft, instrument, or writing in the form of a draft, instrument, or writing made by any receiver-general of Excise, or by any Excise comptroller of the cash as aforesaid, or by any person or persons authorized as aforesaid, or shall utter or publish any draft, instrument, or writing so forged or counterfeited, knowing the same to be forged or counterfeited, with an intention to defraud his Majesty, or any person whomsoever; every person so offending, and being thereof lawfully convicted, shall be and is hereby declared and adjudged to be guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy."

Forging any instrument to obtain money from Bank on account of the receiver general, felony without benefit of clergy (*a*).

(4). Lands and Buildings for Purposes of Excise.

(4). *Lands and buildings, &c.*

By the 7 & 8 Geo. IV. c. 53, s. 122—"That it shall be lawful for the commissioners of Excise, with the consent of the lord high treasurer, or any three or more of the commissioners of the Treasury, to contract for or purchase in trust for his Majesty, his heirs and successors, for the use and service of the revenue of Excise, any messuages, buildings, lands, tenements or hereditaments, either in fee simple or for any other or lesser estate or interest therein, which they the said commissioners of Excise may deem desirable to be contracted for or purchased for the use and service of the revenue of Excise; and that it shall be lawful for the commissioners of Excise to pay the consideration money agreed to be paid or given for the estate or interest so contracted for or purchased out of any money arising from the revenue of Excise which shall be in their hands; and that the several messuages, buildings, lands, tenements, or hereditaments, which at any time or times hereafter may be so contracted for or purchased, with all the rights, members, easements, and appurtenances to the same respectively belonging, shall be conveyed and assured to and vested in the secretary of his

Commissioners of Excise, with consent of Treasury, may purchase lands, &c. for their use, to be conveyed to their secretary, in trust for his Majesty.

(*a*) See 1 Vict. c. 84, s. 2, repealing penalty of death, and substituting transportation in lieu thereof.

(4). *Lands and buildings, &c.*

7 & 8 Geo. 4, c. 53.

Majesty's commissioners of Excise for the time being, and in his successors in such office in perpetual succession, according to the respective nature and quality of the said messuages, buildings, lands, tenements, and hereditaments, and the estate and interest therein so contracted for or purchased in trust for his Majesty, his heirs and successors, for the use and service of the revenue of Excise."

Lands and buildings already purchased in name of any secretary of commissioners to vest in secretary for time being.

Sect. 123. "That upon the death, resignation, or removal of the present secretary, or of any future secretary of the commissioners of Excise in England, Scotland, or Ireland respectively, all messuages, buildings, lands, tenements, and hereditaments, which have been heretofore purchased or otherwise acquired or taken by or in the name or names of the present or any former secretary or secretaries of the commissioners of Excise in England, Scotland, or Ireland respectively, in trust for his Majesty or his royal predecessors, for the use and service of the revenue of Excise, and which are still holden in such trust, by whatsoever mode or conveyance the same may have been purchased or otherwise acquired and taken, either in fee or for any other or lesser estate or interest (whether such trust shall or shall not be expressed on the face of the conveyance or assurance of such messuages, buildings, lands, tenements, or hereditaments), and all erections and buildings which are or which shall or may be hereafter erected and built on any such lands, tenements, or hereditaments, together with the rights, members, easements, and appurtenances to the same respectively belonging (other than and except such messuages, lands, tenements, and hereditaments as may be of copyhold tenure), shall be and become and remain and continue vested in the secretary of his Majesty's commissioners of Excise in England for the time being, and in his successors in such office, in perpetual succession, according to the respective nature and quality of the said messuages, buildings, lands, tenements, and hereditaments, and the several estate and interest of and in the same respectively, in trust for his Majesty, his heirs and successors, for the use and service of the revenue of Excise." And see next page, s. 34 of the 4 Vict. c. 20.

Secretary, under authority of commissioners, may sell or let lands vested in him.

Sect. 124. "That it shall be lawful for the secretary for the time being of his Majesty's commissioners of Excise in England, by and under the authority and direction of such commissioners (testified by writing under their hands and seals, or the hands and seals of any two or more of them), to sell, exchange, or in any manner dispose of, or to let, set, or demise, either by public auction or private contract, the freehold and leasehold messuages, buildings, lands, tenements, and hereditaments respectively, which shall for the time being be vested in such secretary as aforesaid, under and by virtue of this act, with their respective appurtenances, to any body or bodies corporate, or any person or persons who may be willing to purchase or take the same; and it shall be lawful for such secretary, under such authority and direction as aforesaid, for that purpose to make and execute all such conveyances, assurances, and agreements as may be thought proper, and also to do any other act, matter, or thing in relation to any such messuages, buildings, lands, tenements, or hereditaments, as shall by the said commissioners be deemed beneficial for the revenue of Excise, or for the better management thereof, and which might be done by any person or persons having a like interest in any such messuages, buildings, lands, tenements, or hereditaments."

Money produced by sale of such lands to be paid to receiver-general of Excise.

Sect. 125. "That the money arising and produced by the sale or exchange of any of the said messuages, buildings, lands, tenements, or hereditaments, which under the provisions of this act shall be paid by the respective purchaser or purchasers thereof, or the body or bodies corporate, or person or persons making such exchange, shall be paid unto the receiver-general of Excise, or to such person or persons as the said commissioners of Excise, or any two or more of them, shall direct or appoint to receive the same, in trust for his Majesty, his heirs and successors, which money shall be accounted for by the commissioners of

Excise as part of the revenue of Excise; and the receipt of the said receiver-general, or of such other person or persons as aforesaid, for such money (which receipt shall be indorsed on the conveyance or assignment of the said messuages, buildings, lands, tenements, and hereditaments), shall be a complete discharge to the purchaser or purchasers, or body or bodies corporate, or person or persons by whom or on whose account such money shall have been paid."

(4). *Lands and buildings, &c.*

7 & 8 Geo 4, c. 53.

Purchasers of such lands, &c. shall stand possessed thereof, discharged of all prior claims thereon in right of his Majesty.

Sect. 126. "That from and immediately after the payment of such purchase-money as aforesaid, and the execution of every such conveyance and assignment as aforesaid, the purchaser or purchasers, or body or bodies corporate, or person or persons making such exchange as aforesaid therein named, shall be deemed and adjudged to stand seised and possessed of the messuages, buildings, lands, tenements, and hereditaments which shall be so purchased by, and conveyed, assigned, or made over to such purchaser or purchasers, or body or bodies corporate, or person or persons making such exchange as aforesaid respectively, freed and absolutely discharged of and from all manner of prior estates, leases, rights, titles, interests, charges, incumbrances, and demands whatsoever, which can or may be had, made, set up, in, to, out of, or upon, or in respect of the same messuages, buildings, lands, tenements, and hereditaments, by any person or persons whomsoever, by, from, or under, or in trust for his Majesty, his heirs and successors, on any account whatsoever, save and except such estates, leases, rights, titles, interests, charges, incumbrances, claims, and demands, if any, as in any such conveyance or assignment shall be specially excepted."

Power for commissioners, with consent of Treasury, to take lands, &c. upon lease.

The 4 & 5 Will. IV. c. 51, s. 29, enacts, "That it shall be lawful for the commissioners of Excise, with the consent of the lord high treasurer, or any three or more of the commissioners of the Treasury, to contract for and take on lease, in trust for his Majesty, his heirs and successors, for the use and service of the revenue of Excise, any messuages, buildings, lands, tenements, or hereditaments, either for any term, for life or lives or years, or any less interest therein, which they the said commissioners of Excise may deem desirable to be contracted for and taken for the use and service of the revenue of Excise; and every demise of any such messuages, buildings, lands, tenements, or hereditaments, shall be made to, and all covenants relating to any such demise shall be made and entered into, and with and by the secretary of his Majesty's commissioners of Excise for the time being, and his successor in the office of secretary."

All lands and buildings taken for service of Excise to be vested in Secretary of Excise.

And by the 4 Vict. c. 20, s. 34, "That all manors, messuages, buildings, lands, tenements, and hereditaments in the United Kingdom, which have heretofore been purchased, acquired, or taken for the use and service of the revenue of Excise, together with the rights, members, easements, and appurtenances to the same respectively belonging, (other than and except such messuages, lands, tenements, and hereditaments as may be of copyhold tenure), shall be and become, and remain and continue, vested in the secretary for the time being of the commissioners of Excise, and his respective successors as secretaries in such service, according to the nature and quality of the said manors, messuages, buildings, lands, tenements, and hereditaments, and the several estates and interests of and in the same respectively, in trust for her Majesty, her heirs and successors, for the use and service of the revenue of Excise."

(5). Duties of Excise and Licences.

(5) *Duties of Excise, and licences.*

The acts of Parliament respecting the duties of Excise are extremely numerous, owing in a great measure to the absence of occasional consolidating statutes being passed. Under this head or division, in the first place we shall endeavour to give an analysis of the law respecting the *duties* in general; and secondly, of that in connexion with *licences*.

(5). *Duties of Excise, &c.*

The duties.

For the amount of duties on particular articles, see the 2nd section of title Excise, *post.*

The 43 Geo. III. c. 69 (*a*), intituled "*An Act to repeal the Duties of Excise payable in Great Britain, and to grant other Duties in lieu thereof,*" (4th July, 1803), consolidated most of the duties of Excise; and in schedules to the act each article is specified in alphabetical order. *Schedule A. of duties*, beginning with "Auctions," and ending with "Wire;" *Schedule B. of countervailing duties* of Excise on certain commodities imported from Ireland into Great Britain, beginning with "Beer," and ending with "Wire;" and *Schedule C. of allowances, bounties, and drawbacks* of Excise, enumerating the several articles (*b*).

By sect. 3 of this act, the duties are to be under the management of the respective commissioners of Excise, and are to be accountable for, &c. as former duties.

Sect. 4. That the duties and drawbacks under this act shall be levied, &c. as former duties, &c., unless hereby repealed.

Sect. 5. That duties shall be paid in proportion to the actual quantity.

Sect. 6. That duties shall be carried to British consolidated fund.

Sect. 8. This act shall not affect pensions payable by the commissioners, &c. of Excise.

Sect. 9. This act shall not alter the hereditary revenue of his Majesty in Scotland, or the payment of annuities, &c. out of the revenues of Excise.

Sect. 10. The sum reserved out of the duties on licences to retail wine, by 30 Geo. II. c. 19, shall be accounted for out of the duties on such licences granted by this act.

Sect. 11. The amount of what would have been the hereditary duties of Excise shall be computed, set apart, and paid out of the duties by this act granted, as directed by 27 Geo. III. c. 13, s. 51.

Sect. 12. That in future 36 gallons shall be reckoned a barrel of beer or ale, made by common brewers in Great Britain, and the allowance shall be three gallons out of that quantity for waste.

Sect. 13. That such allowance shall be in full for all losses.

Sect. 14. That no beer or ale shall be sold by the common brewers at any other than the above rate; but not to extend to other brewers.

Sect. 15. This act shall not void licences granted under any law of Excise.

Then follow the schedules A, B, and C, above referred to, enumerating the duties, allowances, bounties, and drawbacks.

The *amount* of the duties, &c. on each article is varying continually. They will be stated when we consider the second branch of the subject, and therefore no table thereof is here given. The *particular* regulations as to each item, so far as it is the duty of magistrates to enforce them, will be found arranged under the second division of this subject.

The above statute of the 43 Geo. III. c. 69, and the then-existing law under the unrepealed acts, have been materially altered by various subsequent enactments; the following will be found to be a general analysis of the law upon the subject of duties.

Ale, Beer, Brewers.]—As to allowing the manufacture and use of a liquor prepared from sugar for colouring porter, and for indemnifying persons who have manufactured or used such colouring, see 51 Geo. III. c. 87.

As to making certain allowance of the duties payable on malt and beer, see 56 Geo. III. c. 43.

(*a*) This enactment of 1803 is the last consolidating act as regards *duties.*

(*b*) This act did not extend to malt, tobacco, and snuff, except as to tobacco licences, and tobacco of Spain and Portugal: nor to certain countervailing duties on importation from Ireland, &c. *See Sched. C.*

As to repealing certain drawbacks and countervailing duties on beer, see 56 Geo. III. c. 108.

As to altering and amending the laws for securing payment of duties on beer and ale brewed in Great Britain, see 1 & 2 Geo. IV. c. 22.

As to providing equivalent rates of duties, allowances, and drawbacks on beer made in Scotland or Ireland, according to the measure of the new imperial standard gallon, see 6 Geo. IV. c. 58.

As to consolidating and amending certain laws relating to brewers in Ireland, see 7 & 8 Geo. IV. c. 52.

As to amending 5 Geo. IV. c. 54, for amending the laws relating to retail brewers, see 9 Geo. IV. c. 68.

As to repealing certain duties on cyder, beer, and ale, &c. see 11 Geo. IV. and 1 Will. IV. c. 51.

As to permitting the general sale of beer and cyder by retail, see 11 Geo. IV. and 1 Will. IV. c. 64.

As to providing regulations for preparing and using roasted malt in colouring beer, see 5 Vict. sess. 2, c. 30.

Auctioneers.]—As to additional duties on auctions, see 45 Geo. III. c. 30.

As to explaining and amending Excise laws respecting duties on Excise and goods sold by auction, see 51 Geo. III. c. 95.

As to goods of the Portuguese dominions, imported under 51 Geo. III. c. 47, exempt from auction duty, except on the first sale on account of the importer within twelve months after importation, see 5 Geo. IV. c. 75.

Bricks and Tiles.]—As to additional duties on bricks and tiles, see 45 Geo. III. c. 30.

As to exempting tiles made for the purpose of draining land from duty, see 46 Geo. III. c. 138.

As to certain recited acts repealed. In what case tiles or bricks for draining lands may be made duty free, &c., see 7 Geo. IV. c. 49.

The Excise duties on tiles are wholly repealed by the 3 & 4 Will. IV. c. 11.

As to repealing duties and drawbacks on bricks, and others granted in lieu thereof, and for consolidating and amending the laws for collecting and paying the same, see 2 & 3 Vict. c. 24.

Candles.]—As to repealing duties and drawbacks on candles, see 1 & 2 Will. IV. c. 19.

Coffee, Tea, Chocolate, and Cocoa Nuts.]—As to additional duty on coffee, see 45 Geo. III. c. 30.

As to additional duty on tea sold under 2*s.* 6*d.* per lb., see 46 Geo. III. c. 38.

As to reduction of duties on coffee, see 48 Geo. III. c. 120.

As to amendment of the laws relating to coffee and cocoa nuts, see 49 Geo. III. s. 2, c. 30.

As to allowing dealers to roast their own coffee, see 49 Geo. III. c. 80.

As to lowering duty on certain coffee, see 49 Geo. III. c. 117.

As to allowing dealers to roast their own coffee, see 51 Geo. III. c. 95.

As to regulating the separation of damaged from sound coffee, and to permit dealers to send out coffee, not exceeding 8lbs. weight, without a permit, until two years from passing this act (to 28th July, 1814), see 52 Geo. III. c. 149.

As to 52 Geo. III. c. 149, for regulating the separation of damaged from sound coffee, and to permit dealers to send out any quantity of coffee not exceeding 8 lb. weight, without permit, see 54 Geo. IV. c. 47.

As to the additional duties imposed by 43 Geo. III. c. 81, 46 Geo. III. cc. 39 and 102, and 47 Geo. III. sess. 1, c. 27, (continued to July 5th, 1815), see 54 Geo. III. c. 73.

(5). *Duties of Excise, &c.*

As to granting additional duties on tea, coffee, and cocoa nuts, and consolidating the same with former duties thereon; and for amending certain laws of Excise relating thereto; see 59 Geo. III. c. 53, and 59 Geo. III. c. 105.

Cyder, Perry, Mum, Metheglin, and Mead.]—As to additional duty on cyder and perry, see 45 Geo. III. c. 30.

As to providing for the future assimilation of duties upon mead and metheglin, cyder and perry, in Great Britain and Ireland, see 6 Geo. IV. c. 37.

Glass, Muriate of Potash.]—As to additional duty on glass, see 45 Geo. III. c. 30.

As to countervailing duty on the importation of Irish window glass, see 46 Geo. III. c. 138.

As to the amendment of the laws relating to glass, see 49 Geo. III. st. 2, c. 30.

As to repeal of duties on materials used in making spread window glass and crown glass, and for granting other duties, see 49 Geo. III. c. 63.

As to repeal of duties and drawbacks on flint and phial glass materials, and new duty imposed thereon, see 51 Geo. III. c. 69.

As to repealing the duty on the materials used in making flint and phial glass, and for granting other duties, &c., see 52 Geo. III. c. 54.

As to granting additional duties on glass, hides, tobacco, and snuff, see 52 Geo. III. c. 94.

As to continuing the several laws relating to the duties on glass; for granting a duty on common glass bottles imported; and for the further prevention of frauds in the exportation of glass, see 54 Geo. III. c. 97.

As to reviving and continuing several laws relating to glass made in Great Britain (to 25th March, 1818), see 56 Geo. III. c. 1.

As to altering duties and drawbacks on plate glass, and preventing frauds therein, see 56 Geo. III. c. 108.

As to continuing (to 25th July, 1821) stat. 59 Geo. III. c. 104, continuing certain laws with regard to crown glass and flint and phial glass, and to alter certain laws with regard to flint glass, 1 Geo. IV. c. 16, continued (to 25th July, 1822) by 1 & 2 Geo. IV. c. 13.

As to the 59 Geo. III. c. 104, continuing certain duties on crown, phial, and flint glass, continuing the same (to October 10th, 1827), see 5 Geo. IV. c. 40.

As to repealing duties and drawbacks upon flint glass in Great Britain, and imposing other duties and another drawback in lieu thereof, throughout the United Kingdom, see 6 Geo. IV. c. 117.

As to continuing until 10th of October, 1830, an act relating to duties on crown, flint, and phial glass, and altering certain laws of Excise relating to flint glass, see 7 & 8 Geo. IV. c. 40.

As to repealing duties and drawbacks on plate glass, broad glass, crown glass, bottle glass, and glass bottles, payable in Great Britain and Ireland respectively, and imposing other duties and granting other drawbacks in lieu thereof, throughout the United Kingdom, and making perpetual and extending to the United Kingdom several acts relating to certain duties on glass, see 9 Geo. IV. c. 48.

As to repealing duties on flint glass, and imposing other duties, see 2 & 3 Will. IV. c. 102.

As to consolidating and amending the laws for collecting and securing duties on glass, see 1 & 2 Vict. c. 44.

As to the removing doubts as to the charging of certain duties on glass, see 2 & 3 Vict. c. 25.

Hops.]—As to hops, see 45 Geo. III. c. 94.

As to countervailing duty on Irish hops, see 46 Geo. III. c. 138.

As to regulating the payment of duties on hops, see 1 & 2 Will. IV. c. 53.

Leather, Hides, and Skins.]—As to repealing the additional duties and drawbacks on leather, granted and allowed by 52 Geo. III. c. 94, and 56 Geo. III. c. 110, and to grant other drawbacks in lieu thereof, and to secure the duties on leather, see 3 Geo. IV. c. 83.

As to repealing duties on drawbacks upon tawed skins, sheep skins, and lamb skins, see 7 Geo. IV. c. 23.

Malt.]—As to continuing (to 5th July, 1816) certain additional duties, 55 Geo. III. c. 27 (continued to 5th July, 1821), except as to malt, see 56 Geo. III. c. 17.

As to repealing certain drawbacks and countervailing duties on malt, see 56 Geo. III. c. 108.

As to granting additional duty on malt, and for consolidating and amending the same, see 59 Geo. III. c. 53, and 59 Geo. III. c. 105.

As to providing equivalent rates of duties, allowances, and drawbacks on malt made in Scotland or Ireland, according to the measure of the new imperial gallon, see 6 Geo. IV. c. 58.

As to consolidating and amending certain laws relating to the revenue of Excise on malt made in the United Kingdom; and for amending laws relating to the allowances in respect of the malt duty on spirits made in Scotland and Ireland from malt only, see 7 & 8 Geo. IV. c. 52.

As to amending certain laws relating to the duties on malt made in the United Kingdom, see 7 Will. IV. & 1 Vict. c. 49.

Sugar made from Beet-root.]—As to imposing certain duties on sugar made from beet-root, see 7 Will. IV. & 1 Vict. c. 57.

Paper.]—As to amendment of the laws relating to paper, see 49 Geo. III. st. 2, c. 30.

As to amending the laws relating to paper, see 49 Geo. III. c. 81.

As to water mark on paper for exportation, see 51 Geo. III. c. 95.

As to further securing duties on paper and pasteboard, and repealing the countervailing duty on pasteboard imported from Ireland, and the drawback on paper exported; and granting other countervailing duties and drawbacks in lieu thereof, see 56 Geo. III. c. 103.

As to the better securing duties on paper and pasteboard, see 1 Geo. IV. c. 58.

As to repealing of duties on stained paper, and for reducing duties, &c. on paper, button board, &c. of the first class, and for discontinuing the excise survey on the manufactures of certain articles made from paper, and on dealers in and retailers of vinegar, see 6 & 7 Will. IV. c. 52.

As to consolidating and amending the laws for collecting and securing duties on paper made in the United Kingdom, see 2 & 3 Vict. c. 23.

Passage Vessels.]—As to regulating the retail of excisable articles and commodities to passengers on board of passage-vessels, from one part to another of the United Kingdom, see 9 Geo. IV. c. 47. Amended by 4 & 5 Will. IV. c. 75, s. 10.

Pepper.]—As to granting additional duty on pepper, and for consolidating and amending the same, see 59 Geo. III. c. 53 and 59 Geo. III. c. 105.

Post-horses and Horses let to hire.]—As to transferring to commissioners of Excise the collection &c. of duties on horses let to hire, &c., see 6 & 7 Will. IV. c. 45. And see 3 Vict. c. 17, s. 1, excepting from additional duty.

Salt.]—As to amendment of the laws relating to salt, see 49 Geo. III. st. 2, c. 30.

As to amending the law relating to salt, see 49 Geo. III. c. 81.

As to drawback of duty allowed on salt used in making oxygenated

(5). *Duties of Excise, &c.*

muriatic acid for bleaching of linen, extended to salt used in making such acid for bleaching thread and cotton twist; such drawback allowed for salt so used for six months past, see 52 Geo. III. c. 107.

As to empowering the commissioners to sell salt, see 53 Geo. III. c. 22.

As to altering and amending law relative to salt and rock salt, see 57 Geo. III. c. 77.

As to reduction of duties payable upon salt in England, and repealing duties upon salt (not being foreign salt) and for reducing duties upon foreign salt payable in Scotland, see 3 Geo. IV. c. 82.

As to repealing duties, &c., on salt and rock salt, see 5 Geo. IV. c. 65.

Silks.]—As to the excise duties on the printing of silks to cease, see 7 Geo. IV. c. 53.

Soap.]—As to amendment of the laws relating to soap, see 49 Geo. III. st. 2, c. 30.

As to repealing duties, allowances, and drawbacks on hard soap made in Great Britain, and imported from Ireland, and to grant other duties, allowances, and drawbacks in lieu thereof, see 56 Geo. III. c. 44.

As to preventing frauds in duties on soap, see 59 Geo. III. c. 90.

As to continuing 23 Geo. III. c. 77 (to January 25th, 1826) so far as relates to soap, and to amend the law in respect of the allowances of duties on soap used in certain manufactures, see 3 Geo. IV. c. 25.

As to drawback allowed on soap used in the silk manufactures, (the duties on the printing of silks to cease), see 7 Geo. IV. c. 53.

As to repealing duties and drawbacks on soap and granting other duties in lieu thereof, see 3 & 4 Will. IV. c. 16.

As to continuing duties and allowances on soap used in certain manufactures, see 5 & 6 Will. IV. c. 15.

As to removing doubts as to the charging of certain duties on hard soap, until 11th October 1840, see 2 & 3 Vict. c. 63.

As to duties on soap used in manufactures, allowance of, continued until the end of the session of Parliament after 31st May 1841, see 2 & 3 Vict. c. 32.

As to duties on soap used in manufactures, continuing until the end of the session next after the 31st of July 1844 certain of the allowances of the duty, see 5 & 6 Vict. c. 16.

Spirits.]—As to additional duty on spirits imported into Great Britain, or exported from any warehouse, see 47 Geo. III. st. 1, c. 27.

As to amendment of the laws relating to spirits, see 49 Geo. III. st. 2, c. 30.

As to additional duties on wash and other liquors used in the distillation of spirits, &c., see 51 Geo. III. c. 59.

As to additional duties on brandy, granted by 47 Geo. III. st. 1, c. 27, see 51 Geo. III. c. 61.

As to rum and spirits discharged from Excise on shipping for stores, see 52 Geo. III. c. 142.

As to the better securing Excise duties on spirits, and for rectifying a mistake in 52 Geo. III. c. 3, see 53 Geo. III. c. 147.

As to imposing duty on the excess of spirits made from corn in England above the proportion of nineteen gallons of spirits for every hundred gallons of wash; and for further securing duties on wort or wash made for distilling spirits in England; and for authorizing the shipment of rum for stores in casks containing sixty gallons, see 57 Geo. III. c. 123.

As to granting additional duty on British spirits, and for consolidating and amending the same, see 59 Geo. III. c. 53 and 59 Geo. III. c. 105.

As to granting certain duties upon spirits distilled from corn in Scotland and Ireland, and upon licences for stills for making such spirits, and for providing for the better collecting and securing of such duties,

and for the warehousing of such spirits without payment of duty, see 4 Geo. IV. c. 94.

As to providing equivalent rates of duty, allowances, and drawbacks on spirits made in Scotland or Ireland according to the measure of the new imperial gallon, see 6 Geo. IV. c. 58.

As to imposing countervailing duties on mixtures, &c. made from spirits removed from Ireland to England and Scotland, or from Scotland to England, and granting countervailing drawbacks on the removal thereof, see 6 & 7 Will. IV. c. 72.

As to British spirits excepted from additional duties, &c. see 3 Vict. c. 17.

As to additional duty on spirits, and repealing the allowance on spirits made from malt only in Ireland, see 5 & 6 Vict. c. 15.

As to duty on spirits made from malt only in Ireland, suspending for a limited time so much of 5 Vict. sess. 2, c. 15, as repeals the allowance, see 5 & 6 Vict. c. 25.

As to duties on mixtures and preparations made with spirits when removed from or into England, Scotland or Ireland respectively, repealing the present, and imposing and allowing new countervailing duties and drawbacks, see 5 & 6 Vict. c. 25.

Starch and bleaching Powder.]—As to continuing 23 Geo. III. c. 77 (to Jan. 25th, 1826) so far as relates to starch, and to amend the law in respect of the allowances of duties on starch used in certain manufactures, see 3 Geo. IV. c. 25.

As to repealing part of 26 Geo. III. as to better securing duties on starch, and making other provisions in lieu thereof, see 3 & 4 Will. IV. c. 17.

As to the imposition of a countervailing duty on bleaching powder imported from Ireland, see 54 Geo. III. c. 183.

Stone Bottles.]—As to duties on stone bottles made or imported into Great Britain, see 52 Geo. III. c. 139.

As to repealing duties on stone bottles, and granting other duties in lieu thereof, see 57 Geo. III. c. 32.

As to exempting British and Irish stone bottles, made and used for the sole purpose of containing liquid blacking, from the duties on stone bottles granted by 57 Geo. III. c. 32, see 57 Geo. III. c. 119.

Sweets or Made Wines.]—As to granting (to 5th April, 1819) additional duties on sweets, see 55 Geo. III. c. 30.

Repealed as to sweets by 55 Geo. III. c. 61.

As to providing for the future assimilation of duties upon sweets or made wines in Great Britain and Ireland, see 6 Geo. IV. c. 37.

Tobacco and Snuff.]—As to additional duties on tobacco and snuff, see 46 Geo. III. c. 39.

As to granting additional duties on tobacco and snuff, see 53 Geo. III. c. 34.

As to granting (to 5th April, 1819) additional duty on tobacco and snuff, see 55 Geo. III. c. 30.

As to increasing drawbacks and countervailing duties on tobacco, see 55 Geo. III. c. 129.

As to granting additional duty on tobacco and snuff, and for consolidating and amending the same, see 59 Geo. III. c. 53, and 59 Geo. III. c. 105.

As to charging a duty on certain sorts of unmanufactured tobacco imported into Great Britain from the place of its growth, see 1 Geo. IV. c. 75.

As to the better securing the duties on tobacco, see 1 & 2 Geo. IV. c. 109.

As to duties on tobacco, to amend the 3 & 4 Vict. c. 18, for discon-

(5). *Duties of Excise, &c.*

tinuing the Excise survey, and providing other regulations in lieu thereof, see 5 & 6 Vict. c. 93.

Vinegar, Acetous Acid and Verjuice.]—As to additional duty on vinegar, see 45 Geo. III. c. 30.

As to repealing duty on verjuice and vinegar, and granting other duties in lieu thereof, and for more effectually securing duties on vinegar or acetous acid, see 59 Geo. III. c. 65.

Wine.]—As to additional duty on wine, see 45 Geo. III. c. 30.

As to additional duties on wine during the war, see 44 Geo. 3, c. 49, made perpetual by 45 Geo. III. c. 45.

As to granting additional duties on French wines, see 53 Geo. III. c. 34.

As to limiting the tonnage of British ships in which wine may be exported when the duties are drawn back, see 55 Geo. III. c. 129.

Miscellaneous.]—As to the better securing excise duties on board vessels in the port of Bristol, see 51 Geo. III. c. 31.

As to duties and drawbacks on Epsom salts repealed, see 55 Geo. III. c. 162).

The 7 & 8 Geo. IV. c. 53, ss. 25 and 26, directs at what times and places Excise traders shall pay their duties. See the clause, *post*, tit. "*Entries*," &c.

The 7 & 8 Geo. IV. c. 53, s. 44 to s. 56, relates to the collection and application of the duties and penalties. *See post*, "*Vender*."

Licences.

Duties on licences, general act, 6 Geo. 4, c. 81.

We have seen that sometimes the duty is on the *maker* or *vender* of the commodity, rather than on the commodity itself. In these cases, before the party can *make* or *sell* the commodity he must obtain a *licence* so to do, upon which licence certain *duties* are imposed. The 6 Geo. IV. c. 81, intituled "*An Act to repeal several Duties payable on Excise Licences in Great Britain and Ireland, and to impose other Duties in lieu thereof, and to amend the Laws for granting Excise Licences*," enacts, "that from 5 July, 1825, all (*a*) the duties on licences shall cease, and that instead of the repealed duties the following shall be levied:—

New duties on licences.

"For and upon every *Excise licence* to be taken out by any maker, manufacturer, trader, dealer, retailer, or person hereinafter mentioned, within Great Britain and Ireland, to be paid by such maker, manufacturer, trader, dealer, retailer, and person respectively, the respective annual sum or duty of Excise in British currency hereinafter mentioned; (that is to say) (*b*).

	£	s.	d.
AUCTIONS.—For and upon every Excise licence to be taken out by every person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements or hereditaments, by auction	5	0	0
BEER. (*c*).—Every brewer of table beer only for sale, if the quantity			

(*a*) As to spirit licences, see 6 Geo. IV. c. 80 (passed the same day as c. 81), *post*, *Sect. II.* tit. "*Spirituous Liquors*."

(*b*) See now the 3 Vict. c. 17, intitled, "An Act for granting to her Majesty Duties of Customs, Excise, and Assessed Taxes," by which an additional duty of 5*l.* per cent is imposed, with certain exceptions.

(*c*) See alteration by 11 Geo. IV. & 1 Will. IV. c. 51. The brewer, by sect. 7 of that act, will, after the 10th day of October, 1830, be rated for his licence in proportion to the quantity of *malt* he may consume in his brewery, and not according to the number of *barrels of beer* he brews, in the course of twelve months. This is the only deviation from the 6 Geo. IV. c. 81, in reference to the brewer's licence. If a brewer retails beer, he will be bound by the 11 Geo. IV. & 1 Will. IV. c. 64, to take out a retail licence for that purpose. *See post*, *Section II.* tit. "*Ale and Beer*."

(5). *Duties on licences.*

6 Geo. 4, c. 81.

of beer brewed by such brewer within the year ending the 10th day of October, previous to taking out such licence, shall not exceed 20 barrels	0	10	0
If the same shall exceed 20 barrels, and shall not exceed 50 barrels	1	0	0
If the same shall exceed 50 and shall not exceed 100 barrels	1	10	0
Or if the same shall exceed 100 barrels	2	0	0
Every brewer of beer (other than table beer only) for sale, if the quantity of beer brewed by such brewer within the year ending the 10th day of October, previous to taking out such licence, shall not exceed 20 barrels	0	10	0
If the same shall exceed 20, and shall not exceed 50 barrels	1	0	0
If the same shall exceed 50, and shall not exceed 100 barrels	1	10	0
If the same shall exceed 100, and shall not exceed 1000 barrels	2	0	0
If the same shall exceed 1000 and shall not exceed 2000 barrels	3	0	0
If the same shall exceed 2000, and shall not exceed 5000 barrels	7	10	0
If the same shall exceed 5000, and shall not exceed 7500 barrels	11	5	0
If the same shall exceed 7500, and shall not exceed 10,000 barrels	15	0	0
If the same shall exceed 10,000, and shall not exceed 20,000 barrels	30	0	0
If the same shall exceed 20,000, and shall not exceed 30,000 barrels	45	0	0
If the same shall exceed 30,000, and shall not exceed 40,000 barrels	60	0	0
Or if the same shall exceed 40,000 barrels	75	0	0
Every person who shall first become a brewer of beer for sale, on taking out such licence as aforesaid for that purpose, shall pay the sum of 10*s.*, and, within 10 days after the 10th day of October next after taking out such licence, pay such further additional sum as, with the said sum of 10*s.*, shall amount to the duty hereinbefore mentioned, according to the number of barrels of beer brewed within the preceding year, or period for which such licence was granted	0	10	0
Every brewer of beer for sale, who shall retail such beer to be consumed elsewhere than on his, her, or their premises	5	5	0
Every person, not being a brewer of beer, who shall sell strong beer only in casks, containing not less than 4½ gallons imperial standard gallon measure, or in not less than two dozen reputed quart bottles at one time, to be drank or consumed elsewhere than on his, her, or their premises	3	3	0
Every person who shall be duly authorized by justices of the peace to keep a common inn, ale-house, or victualling house, and who shall sell beer, cyder or perry, by retail, to be drank or consumed in his, her, or their house or premises, if the dwelling-house in which such person shall reside or retail beer, cyder, or perry, as aforesaid, at the time of taking out such licence, shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated under the authority of any act or acts of Parliament for granting duties on inhabited houses (*a*), at a rent of 20*l.* per annum or upwards, or shall not be rented or valued at such rent or annual value, or upwards	1	1	0
And if rated, rented, or valued as aforesaid, at 20*l.* per annum, or upwards	3	3	0
CANDLES (*b*).—Every maker of wax candles, or spermaceti candles, for sale	5	0	0

(*a*) See 4 & 5 Will. IV. c. 75, s. 9, as to ascertaining value, now this duty is repealed.

(*b*) The 1 & 2 Will. IV. c. 19 repeals the duties of licences required to be taken out by makers of candles; and by sect. 2 of that act, makers of candles for sale shall be subject to the regulations of the 59 Geo. 3, c. 90, as melters of tallow, &c. *See post, Section II.* tit. "*Candles.*"

(5). *Duties on licences.*

6 Geo. 4, c. 81.

	£	s.	d.
Every chandler or maker of candles for sale, other than wax or spermaceti candles	2	0	0
COFFEE (*a*).—Every person trading in or selling coffee, tea, cocoa-nuts, chocolate, or pepper	0	11	0
GLASS.—Every glass-maker, for each and every glass-house	20	0	0
HIDES (*b*).—Every tanner	5	0	0
Every tawer	2	0	0
Every dresser of hides or skins in oil	4	0	0
Every currier	4	0	0
Every maker of vellum or parchment	2	0	0
MALT.—Every maltster or maker of malt, if the quantity of malt made by such maltster or maker of malt within the year ending the fifth day of July in each year shall not exceed 50 quarters	0	7	0
If the same shall exceed 50, and shall not exceed 100 quarters	0	15	0
If the same shall exceed 100, and shall not exceed 150 quarters	1	2	6
If the same shall exceed 150, and shall not exceed 200 quarters	1	10	0
If the same shall exceed 200, and shall not exceed 250 quarters	1	17	6
If the same shall exceed 250, and shall not exceed 300 quarters	2	5	0
If the same shall exceed 300, and shall not exceed 350 quarters	2	12	6
If the same shall exceed 350, and shall not exceed 400 quarters	3	0	0
If the same shall exceed 400, and shall not exceed 450 quarters	3	7	6
If the same shall exceed 450, and shall not exceed 500 quarters	3	15	0
If the same shall exceed 500, and shall not exceed 550 quarters	4	2	6
And if the same shall exceed 550 quarters	4	10	0
Every person who shall first become a maltster or maker of malt, on taking out such licence as aforesaid for that purpose, shall pay the sum of seven shillings and sixpence, and, within ten days after the fifth day of July next after taking out such licence, pay such further additional sum as, with the said sum of seven shillings and sixpence, shall amount to the duty hereinbefore mentioned according to the quantity of malt made within the preceding year or period for which such licence was granted	0	7	6
PAPER.—Every maker of paper, pasteboard, or *scaleboard* (*c*)	4	0	0
Every printer, painter, or stainer of paper	4	0	0
PRINTED GOODS (*d*).—Every calico printer, and every printer, painter, or stainer of linens, cottons, stuffs, or silks	20	0	0
SOAP.—Every maker of soap for sale	4	0	0
SPIRITS (*e*).—Every distiller or maker of low wines or spirits	10	0	0

(*a*) By the 9 Geo. IV. c. 44 still under the commissioners of Excise, notwithstanding certain doubts had arisen respecting the same.

(*b*) These duties are wholly repealed and ceased from and after the 5th day of July, 1830, by the 11 Geo. IV. & 1 Will. IV. c. 16.

(*c*) As respects *scaleboard* made from wood, repealed by the 4 & 5 Will. IV. c. 77.

(*d*) These duties, with respect to the printing of silks, were repealed by the 7 Geo. IV. c. 53, s. 5; and with respect to calico-printers, and every printer, painter, or stainer of linens, cottons, and stuffs, were repealed by the 1 Will. IV. sess. 2, c. 17.

(*e*) By the 4 & 5 Will. IV. c. 75, s. 7, it is enacted, "that there shall be raised, levied, collected, and paid throughout the United Kingdom, the additional rates and duties of Excise following: (that is to say),

Upon every Excise licence to be taken out after the 10th of October 1834, by any retailer of spirits in Great Britain and Ireland, of the dwelling-house in which such retailer shall reside or retail such spirits shall not, together with the offices and premises therewith occupied, be rented or valued at a rent of 10*l.* per annum or upwards, an additional duty of . . £1 1 0

If the same shall be rented or valued as aforesaid at 10*l.* per annum or upwards, and under 20*l.*	2	2	0
If at 20*l.* and under 25*l.*	3	3	0
—— 25*l.* ——— 30*l.*	3	13	6
—— 30*l.* ——— 40*l.*	4	4	0
—— 40*l.* ——— 50*l.*	4	14	6
—— 50*l.* per annum or upwards	5	5	0

And all such additional duties shall be raised, levied, collected, recovered and accounted for and paid in the same manner, &c. as granted and imposed by the 6 Geo. IV. c. 81." And see also as to further additional duty on spirits, 3 Vict. c. 17.

(5). *Duties on licences.*

6 Geo. 4, c 81.

	£	s.	d.
Every rectifier or compounder of spirits	10	0	0
Every dealer in spirits, not being a retailer thereof	10	0	0
Every maker of stills in Scotland or Ireland	0	10	0
Every person in Scotland or Ireland, not being a distiller, rectifier, or compounder of spirits, who shall keep or use any still for the carrying on the trade of a chemist, or any other trade or business requiring the use of any still or stills	0	10	0
Every retailer of spirits, (except retailers of spirits in Ireland after mentioned), if the dwelling-house in which such retailer shall reside or retail such spirits at the time of taking out such licence shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated under the authority of any act or acts of Parliament for granting duties on inhabited houses, at a rent of 10*l.* per annum or upwards, or shall not be rented or valued at such rent or annual value, or upwards	2	2	0
If the same shall be rated, rented, or valued as aforesaid, at 10*l.* per annum or upwards, and under 20*l.*	4	4	0
If at 20*l.* and under 25*l.*	6	6	0
If at 25*l.* and under 30*l.*	7	7	0
If at 30*l.* and under 40*l.*	8	8	0
If at 40*l.* and under 50*l.*	9	9	0
If at 50*l.* per annum, or upwards	10	10	0
Every retailer of spirits in Ireland, being duly licensed to trade in, vend, and sell coffee, tea, cocoa-nuts, chocolate, or pepper, and not selling spirits in any greater quantity at one time than two quarts, or any spirits to be consumed in the house or premises of such retailer, if the dwelling-house in which such retailer shall reside or retail such spirits as aforesaid at the time of taking out such licence shall not, together with the offices, courts, yards, and gardens therewith occupied, be rated under the authority of any act or acts of Parliament for granting duties on inhabited houses, at a rent of 25*l.* per annum or upwards, or shall not be rented or valued at such rent or annual value, or upwards	9	9	0
If the same shall be rated, rented, or valued as aforesaid, at 25*l.* and under 30*l.*	10	10	0
If at 30*l.* and under 40*l.*	11	11	0
If at 40*l.* and under 50*l.*	12	12	0
If at 50*l.* and upwards	13	13	0
STARCH (*a*).—Every starch-maker for sale	5	0	0
SWEETS (*b*).—Every maker of any kind of sweets or made wines, or of mead or metheglin for sale	2	2	0
Every retailer of sweets or made wines, or of mead or metheglin	1	1	0
TOBACCO AND SNUFF (*c*).—Every manufacturer of tobacco or snuff, if the tobacco and snuff-work, weighed by such person for manufacture within the year ending the 5th day of July, previous to taking out such licence, shall not have exceeded 20,000 lbs. weight	5	0	0
If the same shall exceed 20,000 lbs. and shall not exceed 40,000 lbs. weight	10	0	0
If the same shall exceed 40,000 lbs. and shall not exceed 60,000lbs. weight	15	0	0

(*a*) By the 4 & 5 Will. IV. c. 77, repealed from and after the 10th of October, 1834.

(*b*) The 4 & 5 Will. IV. c. 77, s. 9, repeals these duties as to *makers*; but, by sect. 10, leaves as above the duties on *retailers* (who, by sect. 11, are to be those selling in less quantities than 15 gallons).

(*c*) As doubts had arisen whether certain regulations &c. remained in force under the Excise authorities, it is enacted that these duties still remain as above: see 9 Geo. IV. c. 44.

(5). *Duties on licences.*

6 Geo. 4, c. 81.

	£	s.	d.
If the same shall exceed 60,000 lbs. and shall not exceed 80,000 lbs. weight	20	0	0
If the same shall exceed 80,000 lbs. and shall not exceed 100,000 lbs. weight	25	0	0
If the same shall exceed 100,000 lbs. weight	30	0	0
Every person who shall first become a manufacturer of tobacco or snuff, on taking out such licence as aforesaid for that purpose, shall pay the sum of five pounds, and shall, within ten days after the fifth day of July next after taking out such licence, pay such further sum as with the said sum of five pounds shall amount to the duty hereinbefore mentioned, according to the quantity of tobacco and snuff-work weighed for manufacture within the preceding year or period for which such licence was granted	5	0	0
Every dealer in or seller of tobacco or snuff	0	5	0
VINEGAR.—Every maker of vinegar or acetous acid for sale	5	0	0
WINE.—Every dealer in foreign wine, who shall not have an Excise licence for retailing spirits, and a licence for retailing beer	10	0	0
Every retailer of foreign wine, who shall have taken out a licence for retailing beer to be drank or consumed on his, her, or their premises, but shall not have taken out an Excise licence for retailing spirits to be so drank or consumed	4	4	0
Every retailer of foreign wine who shall have taken out Excise licences for retailing beer and spirits respectively to be so drank or consumed	2	2	0
WIRE (*a*).—Every wire-drawer, or other person who shall draw or cause to be drawn any gilt or silver wire, commonly called big wire	2	0	0

New duties to be under management of commissioners of Excise.

And that for the better securing, raising, levying, and collecting of the said duties hereby granted, the same shall be under the collection and management of the commissioners of Excise for the time being; and that all the monies therefrom arising shall (the necessary charges of raising and accounting for the same being deducted therefrom) be paid into the receipt of His Majesty's Exchequer, and carried to and made part of the consolidated fund of the United Kingdom of Great Britain and Ireland.

Brewers in Ireland to be deemed, for purposes of this act, to have brewed one barrel of beer for every two bushels of malt employed in brewing (*b*).

Sect. 3—reciting that "Whereas the duty imposed by this act on every licence to be taken out by any brewer or brewers of beer for sale is rated according to the quantity of beer brewed (*b*) by the person or persons taking out such licence; and whereas no account is taken or kept by the officers of Excise in Ireland of the quantity of beer brewed there for sale, but of the malt only used and employed by all and every brewer or brewers there for that purpose"—enacts "that all and every brewer or brewers of beer for sale in Ireland shall, for the purpose of fixing and regulating the rate and amount of duty to be paid by such brewer or brewers for the licence to be taken out by him, her, or them, under this act, be deemed to have brewed one barrel of beer for every two bushels of malt used or employed by such brewer or brewers in brewing; and shall, for every licence to be taken out by him, her, or them, under this act for brewing beer for sale, pay such amount of duty, according to the rate by this act imposed, as shall be correspondent to the quantity of beer which he, she, or they shall be deemed to have brewed as aforesaid."

Sect. 4 relates to what persons in Ireland shall be deemed grocers, and be entitled to a spirit retail licence.

(*a*) Repealed by the 7 Geo. IV. c. 53, s. 6.

(*b*) Since the 10th October, 1830, this has applied to brewers in England, by 11 Geo. IV. & 1 Will. IV. c. 51. *See post, Section II.* tit. "*Ale and Beer.*"

(5). *Duties on licences.*

6 Geo. 4, c. 61

Where house not rated, rent to be certified by tenant and landlord; and if certificate unsatisfactory, commissioners shall adopt other means for ascertaining true rent.

Sect. 5 recites that, "Whereas the duty upon certain licences authorized and required to be taken out by this act is imposed at and according to the rent at which the premises used for the purpose or purposes mentioned in such licence are rated to the duty on inhabited houses; and whereas many houses or premises in different parts of the United Kingdom, for or in respect of which such licences may be required, may not be so rated; be it therefore enacted, that in all cases, and in any part of the United Kingdom in which any such house or premises shall not be so rated as aforesaid, it shall and may be lawful, in order to ascertain the rent or annual value of such house or premises, for the person or persons, being the tenant or occupier thereof, who shall apply for any such licence, upon which the duty is so imposed as aforesaid, to produce to the person or persons authorized to grant such licence as aforesaid a certificate, signed by himself and the owner or landlord of the said house and premises, stating the true rent paid by or for which such house or premises is or are let to such tenant or occupier; or if the true rent, by reason of the payment of any premium, or performance of any condition or otherwise, shall not be reserved and payable to the owner or landlord by the tenant or occupier of such house or premises, then and in such case, stating the estimated rent or true annual value of such house or premises, and the rate of duty payable by such tenant or occupier for such licence, shall be paid, taken, and received, according to the rent or value so certified. Provided always, that if the person or persons authorized to grant such licence shall be dissatisfied with the rent or value so certified, he or they shall and is and are hereby authorized and required to adopt such other means as the commissioners of Excise shall think fit, and shall from time to time direct, to ascertain the true rent or annual value of such house or premises; and that thereupon the rate of duty payable for and upon such licence shall be paid, taken, and received, according to the rent or annual value of the house and premises so ascertained as last aforesaid; anything herein or in any other act or acts of parliament to the contrary thereof notwithstanding."

Licence, by whom to be granted in London, in Edinburgh, or Dublin (a).

Sect. 6. "That every Excise licence which is authorized or required to be taken out by this act shall be granted, and the duty thereupon imposed shall be paid in and throughout the United Kingdom in manner and form following; that is to say, if any such licence shall be taken out within the limits of the head or chief office of Excise in London, then such licence shall be granted under the hands and seals of two or more of his Majesty's commissioners of Excise, or of such person or persons as such commissioners shall from time to time employ for that purpose, and the duty thereupon imposed as aforesaid shall be paid at such head or chief office at the time of granting the licence; or if such licence shall be taken out within the limits of the cities of Edinburgh or of Dublin respectively, such licence shall be granted under the hands and seals of his Majesty's commissioner or commissioners and assistant commissioners of Excise acting in and for Scotland or Ireland respectively for the time being, or of any two of them respectively, or of such person or persons as such commissioner or commissioners and assistant commissioners shall from time to time employ for that purpose, and the duty thereupon imposed shall be paid at the chief office of Excise in Edinburgh or Dublin respectively at the time of granting the licence; or if such licence shall be taken out in any other part of the United Kingdom without such respective limits as in that behalf respectively aforesaid, then and in every such case the same shall be granted under the hands and seals of the collector, or other person hav-

(a) A licence to sell beer may also be taken out by any inhabitant paying 2*l.* 2*s.* See 11 Geo. IV. & 1 Will. IV. c. 64, *post*, tit. "*Ale, &c.*"

(5). *Duties on licences.*

6 Geo. 4, c. 81.

ing charge of the collection, and supervisor of Excise within the collection and district in which such licence is taken out, and the duty thereupon imposed shall be paid to such collector or other person as aforesaid at the time of granting the licence; and such respective commissioners of Excise in England, and commissioner or commissioners and assistant commissioners of Excise acting in and for Scotland and Ireland respectively, and the person or persons by them respectively employed as aforesaid, and every collector or other person having charge of the collection, and supervisor as aforesaid, is and are hereby respectively authorized and required to grant and deliver every such licence to the person or persons who shall apply for and be legally entitled to receive the same, forthwith upon payment of the duty or sum of money thereupon imposed, free from all poundage, fee, gratuity, or any other payment whatsoever."

Contents of licence.

Sect. 7. "That in every licence to be taken out under or by authority of this act shall be contained and set forth the purpose, trade, or business for which such licence is granted, and the true name and place of abode of the person or persons taking out the same, and the true date or time of granting such licence, and (except in the case of auctioneers) the place at which the trade or business for which such licence is granted shall be carried on. Provided always, that persons in partnership, and carrying on their trade or business in one place and set of premises only, shall not be obliged to take out more than one licence in any one year, for the purpose of carrying on such trade or business, save and except that each and every person whatsoever exercising or carrying on the trade or business of an auctioneer, or acting as such, shall take out a separate and distinct licence for that purpose; any thing herein contained to the contrary thereof notwithstanding." See *post*, s. 26, *note*.

Partners need not take out more than one licence, except auctioneers

Auctioneer to take out licence for sale besides his own auctioneer's licence, in certain

Sect. 8. "That every person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments, by auction, shall, over and above any licence to him or her granted as an auctioneer, take out such licence as is required by law, to deal in or retail, or to vend, trade in, or sell any goods or commodities for the dealing in or retailing or vending, trading in or selling, of which an Excise licence is specially required, before he or she shall be permitted or authorized to sell such goods or commodities by auction; and if any such person shall sell any such goods or commodities as aforesaid by auction without having taken out such licence as aforesaid for that purpose, he or she shall be subject and liable to the penalty in that behalf imposed upon persons dealing in or retailing, vending, trading, or selling any such goods or commodities without licence, notwithstanding any licence to him or her before granted as aforesaid for the purpose of exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments by auction; any thing herein contained to the contrary notwithstanding. Provided always, that where any such goods or commodities as aforesaid are the property of any person or persons duly licensed to deal in or retail, or to vend, trade in, or sell the same, such person or persons having made lawful entry of his, her, or their house or premises for such purpose, it shall and may be lawful for any person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments by auction as aforesaid, being duly licensed for that purpose, to sell such goods or commodities as aforesaid for and on behalf of such person or persons, and upon his, her, or their entered house or premises, without taking out a separate licence for such sale."

Exception.

No person or persons taking out licence shall give

Sect. 9. "That from and after the 5th day of July, 1825, where by any act or acts of Parliament relating to Excise licences in force in Great Britain or Ireland on or immediately before the said 5th day of

July, 1825, it is required that any person or persons taking out an Excise licence to exercise or carry on any trade or business therein mentioned in any part of the United Kingdom should give bond at the time of granting such licence, it shall and may be lawful for such person or persons, except persons exercising or carrying on the trade or business of a brewer of beer in Ireland (*a*), or the trade or business of an auctioneer, or person selling any goods or chattels, lands, tenements, or hereditaments by auction in any part of the United Kingdom, to take out such licence without giving bond as aforesaid; and that from and after the 5th day of July, 1825, where bond is given by any person or persons exercising or carrying on the trade or business of a brewer of beer for sale in Ireland, or by any person exercising or carrying on the trade or business of an auctioneer, or person selling any goods or chattels, lands, tenements, or hereditaments by auction in any part of the United Kingdom, such bond shall bear date with the day or date of the licence taken out for such purpose, and shall be binding upon the person or persons by whom such bond was made and entered into from the day of such date, and not from the day on which the same may have been executed or delivered; any law or usage to the contrary thereof notwithstanding. Provided always, that nothing herein contained shall extend or be deemed or construed to extend to annul or make void any bond heretofore made, and which shall be in force and unexpired on the said 5th day of July, 1825, but that every such bond as last aforesaid shall remain and continue in force until the day of the expiration thereof; any thing herein contained to the contrary notwithstanding."

(5). *Duties on licences.*

6 Geo 4, c. 81. bond, except in certain cases (*a*).

Sect. 10. "That no one licence taken out under or by authority of this act, by any person or persons, except auctioneers or maltsters, shall authorize or empower such person or persons to exercise or carry on the trade or business mentioned in such licence in more than one separate and distinct set of premises, such premises being all adjoining or contiguous to each other, and situate in one place, and held together for the same trade or business, and of which he, she, or they shall have made lawful entry, to exercise or carry on therein his, her, or their trade or business as aforesaid, at a time of granting such licence, but that a separate and distinct licence shall be taken out by all and every such person or persons as aforesaid, except as aforesaid, to exercise or carry on his, her, or their trade or business as aforesaid, at or in any other or different premises than as before mentioned. Provided always, that where the amount or rate of any such licence shall depend upon the quantity of goods made or manufactured by the person or persons to whom the same is granted, such quantity shall be computed from the respective goods only made or manufactured by such person or persons at the premises in respect of which such licence is granted, and shall not include goods made or manufactured by such person or persons at any other or different premises, for which a separate and distinct licence is required as above mentioned."

One licence good only for trade carried on in one place.

Exception.

Sect 11. "Provided always, that nothing herein contained shall extend to prohibit any person or persons duly licensed to sell beer, cyder, or perry by retail, to be drank or consumed in his, her, or their house or premises, or any retailer of spirits (not being a retailer of spirits in Ireland, licensed as a grocer, to trade in, vend, and sell coffee, tea, cocoa nuts, chocolate, or pepper), or any retailer of foreign wine, or retailer of sweets or made wines, or of mead or metheglin, he or she being duly licensed respectively for such respective purpose, to carry on his or her trade or business for which he or she respectively shall be so licensed as aforesaid, in booths, tents, or other places, at the time and place and

Not to extend to sales by retail at fairs or races, in certain cases (*b*).

(*a*) A bond is not to be required of brewers in Great Britain on taking out a licence, by the 11 Geo. IV. & 1 Will. IV. c. 51, s. 8.

(*b*) The licences mentioned in this section are not now all necessary, as by reference to the commencement of this article, *ante*, p. 642 *et seq.*, will be seen.

(5). *Duties on licences.*

6 Geo 4, c. 81.

within the limits of holding any lawful and accustomed fair, by virtue of any law or statute in that behalf, or any public races. Provided also, that in all cases in which the house or premises in respect of which any Excise licence is or shall be granted shall be burnt down, or otherwise destroyed, or rendered uninhabitable by fire or other unavoidable cause or accident, it shall and may be lawful for the commissioners and assistant commissioners of Excise, or collector and supervisor, or other person or persons authorized to grant licences within the district or place in which such house or premises was or were situate, upon due notice thereof to him or them in that behalf given, to authorize and empower, by indorsement on such licence, or otherwise, as the commissioners of Excise shall direct, the person or persons authorized to carry on trade or business by such licence at the house or premises so burnt down or otherwise destroyed or rendered uninhabitable, to carry on such trade or business at any other and different house or premises in the same district or place, of which due entry shall be thereupon made by such person or persons at the time of such removal thereto. Provided always, that where such licensed person or persons as aforesaid shall be a person or persons by law required to be duly authorized by justices of the peace to keep a common inn, alehouse, or victualling house, it shall not be lawful for the commissioners or assistant commissioners of Excise, or such collector and supervisor, or other person or persons authorized to grant licences as aforesaid, to authorize or empower such licensed person or persons as aforesaid, unless such person or persons shall, besides giving such notice as hereinbefore required, produce to such collector and supervisor, or other person or persons authorized to grant licences as aforesaid, such authority from justices of the peace, as by law required in that behalf, to keep a common inn, alehouse, or victualling house, in the house or premises to which such person or persons shall desire to remove, in consequence of such fire or other unavoidable cause or accident as aforesaid."

No excise licence necessary for sale of any exciseable commodity whilst it is in the import warehouses.

Sect. 12. "That it shall not be necessary for any person or persons to take out an Excise licence for the sale of any foreign goods or commodities, for the sale of which in any manner an Excise licence is required by this act, whilst such goods or commodities shall be and remain in the warehouse or warehouses in which the same shall have been deposited, lodged, or secured according to law, before payment of duty upon the importation thereof; any thing in this or any other act to the contrary thereof in anywise notwithstanding. Provided always, that every such sale shall be of not less than one entire cask or package of the liquors or goods so warehoused, and be made to one person, or to persons carrying on trade or business in partnership."

Limitation of quantity.

No licence to be granted for selling beer or cyder by retail, to be drank on the premises without a justice's licence (a).

Sect. 13. "That no Excise licence shall be granted under or by authority of this act, for the sale of any beer, or cyder, or perry, by retail, to be drank or consumed upon the house or premises of the person or persons applying for such licence, to any person or persons who shall not produce at the time of applying for such licence a certificate or authority then in force, to him, her, or them in that behalf granted in due form of law by justices of the peace or magistrates, or other competent persons, for such person or persons applying for such licences as aforesaid to keep a common inn, alehouse, or victualling house; and if any such licence shall be granted to any person or persons other than as aforesaid, the same shall be and is hereby declared to be absolutely null and void to all intents and purposes, and the person or persons taking out the same shall be subject to all penalty or penalties to which he, she, or they would have been subject had no such licence been granted."

No licence to be granted to sell

Sect. 14. "That no licence for the sale of any spirits or foreign wine,

(a) See now, *post, Section II.* tit. "*Ale & Beer,*" and 6 & 7 Will. IV. c. 38.

(5). *Duties on licences.*

or sweets, or made wines, or mead or metheglin, by retail, to be drank or consumed in or upon the house or premises where sold, shall be granted to any person or persons who shall not have and produce a licence for the sale of beer, cyder, or perry, by retail, to be drank or consumed in or upon such house or premises, in that behalf granted as herein by this act before mentioned; and if any licence for the sale of any spirits or foreign wine, or sweets or made wines, or mead or metheglin, by retail, to be drank or consumed in or upon the house or premises where sold, shall be granted to any person or persons other than as aforesaid, such licence shall be and is hereby declared to be absolutely null and void to all intents and purposes, and all and every such person or persons as aforesaid shall be subject and liable to all and every penalty and penalties imposed upon persons selling spirits or foreign wines, or sweets or made wines, or mead or metheglin, by retail without licence (*a*)."

6 Geo. 4, c. 81. spirits, foreign wines, or sweets to be drunk on the premises except to persons having retail beer licence.

Sect. 15. "That the spirits called aqua vitæ in Scotland shall be deemed and taken to be British spirits to all intents and purposes, and that all persons retailing such spirits in Scotland or elsewhere shall first take out a licence to retail beer, and also a licence to retail spirits, as before directed by this act, and shall in all respects be subject to all the same rules, regulations, and restrictions to which such retailers of spirits are subject or liable; any thing in this or any other act contained to the contrary thereof notwithstanding."

No licence for retailing aqua vitæ to persons not licenced to sell beer by retail.

Sect. 16. "That from and after the 5th day of June, 1825, all Excise licences taken out in the United Kingdom by any brewer or brewers of beer, or by any distiller or maker, distillers or makers of low wines or spirits, or by any person or persons who shall be duly authorized by justices of the peace to keep a common inn, alehouse, or victualling house, and who shall take out a licence for selling beer, cyder, or perry by retail, to be drank or consumed in the house or premises, or for selling spirits or foreign wine, or sweets or made wines, or mead or metheglin, by retail, under or by virtue of this act, or any other law or laws of Excise (except any Excise licence or licences theretofore granted, and which shall be then in force and unexpired), shall continue and be in force from the day of the date of such licences respectively until the 10th day of October following, on which day in each year all such Excise licences (except as aforesaid) shall expire; and that all other Excise licences throughout the United Kingdom, except those above specified, and except as above excepted, shall continue and be in force from the day of the date of such licences respectively until the 5th day of July following, on which day in each year all such licences as last aforesaid (except as aforesaid) shall expire; and all and every person or persons who shall have taken out any such licence as aforesaid, and who shall wish or intend to continue the trade or business for which such licence was granted for any longer space of time, shall take out a fresh licence for the year following, to expire on one of such days as hereinbefore mentioned, according to the nature of the licence by him, her, or them taken out, and shall so renew the same from year to year, so long as he, she, or they shall continue such trade or business, and shall pay in each and every such case the duty thereupon imposed at such time and place as hereinbefore mentioned; and every such person or persons shall in every such case as aforesaid give notice in writing at least twenty-one days before the expiration of the current licence to him, her, or them before granted, of such his, her, or their intention to continue the trade or business for which such licence was before granted, to the collector or supervisor, or other person or persons authorized to grant licences for the district or place at which such trade or business shall be carried on; and in cases where the Excise licence is so re-

Licences, taken out by brewers shall expire on the 10th of October in each year, and all other licences on the 5th day of July, to be renewed yearly.

Notice for renewal.

Date of licence.

(*a*) See 5 & 6 Will. IV. c. 39, s. 7, *post*, *Section II.*, tit. "*Spirituous liquors.*"

(5). *Duties on licences.*

6 Geo. 4, c. 81.

newed as aforesaid, and such notice as aforesaid shall have been given, the new licence shall bear date from the day or date of the expiration of the current licences before granted; but in case where such notice shall not have been given as aforesaid, and in all other cases than as aforesaid, the licence shall bear date from the day of the date of the application made for such licence, although and notwithstanding any such licence may be delivered at any day subsequent to the date of such application."

Licences may be granted to beginners for proportional part of year, who shall pay duty accordingly.

Sect. 17. "Provided always, that if any person or persons shall commence or begin to exercise or carry on any trade or business, for the exercise or carrying on of which an Excise licence is required, such person or persons not having before taken out any such licence, it shall and may be lawful for the person and persons authorized to grant licences, to grant such licence for the remainder of the current year in which such licence shall be taken out, ending on the 5th day of July or on the 10th day of October next following the date of the licence taken out by such person or persons, according to the nature of such licence, upon payment of such proportional part of the duty thereupon imposed, in such manner as hereinafter mentioned; that is to say, if such licence shall be taken out at any time within the first quarter of the current year in which such licence shall be taken out, and ending as aforesaid, or in the quarter expiring on the 10th day of October, or on the 5th day of January next following the date of such licence, according to the nature of the licence taken out, that then the person or persons taking out such licence shall pay the whole duty imposed upon such licence, in such manner as hereinbefore mentioned at the time of granting such licence; and if such licence shall be taken out at any time within the second quarter of such current year, and ending as aforesaid, or in the quarter expiring on the 5th day of January, or on the 5th day of April, next following the date of such licence, according to the nature of the licence taken out, the person or persons taking out such licence shall pay three-fourth parts of the duty imposed upon such licence, in such manner as hereinbefore mentioned at the time of granting such licence; and if such licence shall be taken out at any time within the third quarter of such current year, and ending as aforesaid, or in the quarter expiring on the 5th day of April, or on the 5th day of July, next following the date of such licence, according to the nature of the licence taken out, one half of the duty imposed upon such licence shall be paid in such manner as hereinbefore mentioned at the time of granting such licence; and, finally, if such licence shall be taken out at any time within the last quarter of such current year, and ending as aforesaid, or in the quarter expiring on the 5th day of July, or on the 10th day of October, next following the date of such licence, according to the nature of the licence taken out, that then a fourth part only of the duty imposed upon such licence shall be paid in such manner as hereinbefore mentioned at the time of granting such licence."

Persons taking out new licence when to be considered beginners.

Sect. 18. "Provided also, that no person or persons who shall at any time have taken out an Excise licence for the exercise or carrying on of any trade or business for which an Excise licence is required, and who shall in any subsequent year after such licence shall have expired take out a new licence for the carrying on the same trade or business, whether on the same or on other or different premises from those on which he, she, or they before carried on such trade or business, shall be deemed or taken to be a person or persons commencing or beginning to exercise or carry on such trade or business, within the intent and meaning of this act, so as to entitle him, her, or them to take out such licence, upon payment of a proportional part only of the duty thereupon imposed; but all and every such person or persons as aforesaid shall pay the whole of such duty, unless the period of time between the expiration of the former licence and the taking out of the new licence shall at the least be a period of two years."

(5). *Duties on licences.*

6 Geo. 4, c. 81.

Licences for matters herein specified to be renewed for proportional part of year.

Sect. 19. "That where any licence taken out by any brewer or brewers of beer, or by any distiller or maker, distillers or makers of low wines or spirits, or by any person or persons who, being authorized by justices of the peace to keep a common inn, alehouse, or victualling house, shall have taken out a licence for selling beer, cyder, or perry by retail, to be drank or consumed in the house or premises where sold, or for selling spirits, foreign wine, or sweets or made wines, or mead or metheglin, by retail in the United Kingdom, under any act or acts of Parliament in force in Great Britain or Ireland respectively, on or immediately before the said 5th day of July, 1825, shall expire between the said 5th day of July, 1825, and the 10th day of October, 1825, it shall and may be lawful for the person and persons authorized to grant licences within the district or place in which such person or persons respectively carry on trade or business, to grant such person or persons respectively, by whom respectively the former licences were taken out as aforesaid, a licence as a brewer or brewers of beer, or as a distiller or maker, distillers or makers of low wines or spirits, or if duly authorized by justices of the peace to keep a common inn, alehouse, or victualling house, a licence for selling beer, cyder, or perry by retail, to be drank or consumed in the house or premises, or for selling spirits or foreign wine, or sweets or made wines, or mead or metheglin, for such person or persons respectively, to exercise and carry on such respective trades or business for the remainder of the year ending the 10th day of October, 1825, under the provisions of this act, upon payment of one-fourth part of the duty imposed upon such licences respectively, at the time of granting thereof; and that all such licences shall expire on the 10th day of October, 1825, and shall be renewed, or a new licence in that behalf granted, and for the same purpose, for the whole year ensuing, to expire on the 10th day of October following; and such licences shall be so renewed from year to year, as long as such licences shall continue to be taken out by such person or persons as aforesaid, to whom the same respectively were before granted; and where any licence taken out by any such person or persons as before specified, under any act or acts of Parliament in force as aforesaid, on or immediately before the said 5th day of July, 1825, shall expire between the 10th day of October, 1825, and the 5th day of January, 1826, it shall and may be lawful for the person or persons authorized to grant licences as aforesaid to grant to the person or persons by whom such licence shall have been so taken out as aforesaid a licence to exercise or carry on the same trade or business under the provisions of this act, for the remainder of the year ending the 10th day of October, 1826, upon payment of the whole duty imposed upon such licence at the time of granting thereof; and if any licence taken out by any such person or persons as before specified, under any act or acts of Parliament in force as aforesaid, on or immediately before the 5th day of July, 1825, shall expire between the 5th day of January, 1826, and the 5th day of April, 1826, it shall and may be lawful for the person or persons authorized to grant such licences as aforesaid, to grant to the person or persons by whom such licence shall have been so taken out as aforesaid, a licence to exercise or carry on the same trade or business, under the provisions of this act, for the remainder of the year ending the 10th day of October, 1826, upon payment of three-fourth parts of the duty imposed upon such licence at the time of granting thereof; and if any licence taken out by any such person or persons as before specified, under any act or acts of Parliament in force as aforesaid, on or immediately before the 5th day of July, 1825, shall expire between the 5th day of April, 1826, and the 5th day of July, 1826, it shall and may be lawful for the person or persons authorized to grant licences as aforesaid, to grant to the person or persons by whom such licence shall have been so taken out as aforesaid, a licence to exercise or carry on the same trade or business under the provisions of this act for the remainder of the year, ending the 10th day

(5). *Duties on licences.*

6 Geo. 4, c. 81.

of October, 1826, upon payment of one-half part of the duty imposed upon such licence at the time of granting thereof; and that all such licences which shall be so granted as aforesaid, between the 10th day of October, 1825, and the 5th day of July, 1826, shall expire respectively on the 10th day of October, 1826, and shall then be renewed, or a new licence for the same purpose granted for the whole year ensuing, to expire on the 10th day of October following; and such licences shall so in such manner be renewed from year to year, as long as such licences shall continue to be taken out by such person or persons as aforesaid, to whom the same were before granted respectively."

All other licences for matters herein specified to be renewed for proportional part of year.

Sect. 20. "That where any licence taken out by any person or persons whatsoever in the United Kingdom, other than a brewer of beer, or than a distiller or maker, distillers or makers of low wines or spirits, or than a person or persons authorized by justices of the peace to keep a common inn, alehouse, or victualling house, who shall have taken out a licence for selling beer, cyder, or perry, to be drank or consumed in the house or premises where sold, or for selling spirits or foreign wine, or sweets or made wines, or mead or metheglin by retail, under any act or acts of Parliament in force in Great Britain or Ireland respectively, on or immediately before the said 5th day of July, 1825, shall expire between the said 5th day of July, 1825, and the 5th day of July, 1826, it shall and may be lawful for the person or persons authorized to grant licences within the district or place in which such person or persons other than as aforesaid shall carry on trade or business, to grant to such person or persons a licence to exercise or carry on the same trade or business for which such licence was before granted, under any act or acts in force as aforesaid, on or immediately before the said 5th day of July, 1825, under the provisions of this act, for the remainder of the year ending the 5th day of July, 1826, in manner hereinafter following; that is to say, if the licence taken out by any such person or persons other than as aforesaid, under any act or acts in force as aforesaid, on or immediately before the said 5th day of July, 1825, shall expire between the said 5th day of July, 1822, and the 10th day of October then next following, then upon payment of the whole duty imposed upon such licence at the time of granting thereof; and if the licence taken out by any such person or persons, other than as aforesaid, under any act or acts in force as aforesaid, on or immediately before the said 5th day of July, 1825, shall expire between the said 10th day of October, 1825, and the 5th day of January, 1826, then upon payment of three-fourth parts of the duty imposed upon such licence at the time of granting thereof; and if the licence taken out by any such person or persons, other than as aforesaid, under any act or acts in force as aforesaid, on or immediately before the said 5th day of July, 1825, shall expire between the said 5th day of January, 1826, and the 5th day of April then next following, then upon payment of one-half of the duty imposed upon such licence at the time of granting thereof; and finally, if the licence taken out by any such person or persons, other than as aforesaid, under any act or acts in force as aforesaid, on or immediately before the said 5th day of July, 1825, shall expire between the said 5th day of April, 1826, and the said 5th day of July, 1826, then upon payment of one-fourth part of the duty wholly imposed upon such licence at the time of granting thereof; and all such licences so granted as aforesaid between the said 5th day of July, 1825, and the 5th day of July, 1826, shall expire respectively on the 5th day of July, 1826, to be then renewed, or a new licence for the same purpose granted for the whole year ensuing, to expire on the 5th day of July following: and such licences shall in such manner be renewed from year to year, as long as such licences shall continue to be taken out by such person or persons, other than as aforesaid, to whom the same were before granted respectively."

Licences may be transferred to executors, &c.;

Sect. 21. "Provided always, that upon the death of any person or persons licensed under or by virtue of this act, or any law or laws of

(5). *Duties on licences.*

6 Geo. 4, c. 81.

but in certain cases not without certificate of magistrate.

Excise, or upon the removal of any such person or persons from the house or premises at which he, she, or they were authorized by such licence to exercise or carry on the trade or business mentioned in such licence, it shall or may be lawful for the person or persons authorized to grant licences, to authorize and empower, by indorsement on such licence, or otherwise, as the commissioners of Excise shall direct, the executors or administrators, or the wife or child of such deceased person, or the assignee or assigns of such person or persons so removing as aforesaid, who shall be possessed of and occupy the house or premises before used for such purpose as aforesaid, in like manner to exercise or carry on the same trade or business mentioned in such licence, in or upon the same house or premises at which such person or persons as aforesaid deceased or removing as before mentioned, by virtue of such licence to him, her, or them in that behalf granted, before exercised or carried on such trade or business, for and during the residue of the term for which such licence was originally granted, without taking out any fresh licence, or payment of any additional duty, or any fee thereupon for the residue of such term and until expiration thereof. Provided always, that a fresh entry of the premises at which such trade or business shall continue to be so exercised or carried on as aforesaid shall thereupon be made by and in the name or names of the person or persons to whom such authority as aforesaid shall be granted; and provided also, that no such authority as aforesaid shall be granted for the sale of beer, cyder, or perry, or sweets, or made wines or sweets, mead or metheglin by retail, to be drank or consumed in or upon the house or premises for which the original licence was granted, except and in such cases where a proper certificate granted and given by a justice of the peace or magistrate, or other competent person according to the law, made after the death or removal of the former occupier or occupiers of the premises shall have taken place, shall be produced, approving of the person or persons to whom such certificate shall be given or granted as aforesaid."

(But see the new regulations, 11 Geo. IV. & 1 Will. IV. c. 64, &c. *post*, tit. "*Ale and Beer*," and *ante*, tit. "*Alehouse*," *Vol. I*).

Persons disabled by conviction from keeping a common inn, &c. not allowed to retail beer

Sect. 22. "That all and every person or persons who shall be disabled by any conviction from holding or having a licence to keep, or from keeping a common inn, alehouse, or victualling house, shall also by such conviction be disabled from taking out and from having any Excise licence to sell, and for selling beer, cyder, or perry by retail in any manner whatsoever, under any Excise licence or licences obtained for such purpose; and if any such person shall, after such conviction as aforesaid, take out or have any Excise licence or licences for any such purpose as aforesaid, the same shall and is hereby declared to be absolutely null and void to all intents and purposes; and every person who shall, after such conviction as aforesaid, sell any beer, cyder, or perry by retail in any manner whatsoever, shall incur the penalty for so doing without licence; and in all such cases in the prosecution for the recovery of such penalty a certificate from the clerk of the peace or person acting as such of any such conviction as aforesaid, shall on the trial in such prosecution be legal evidence thereof, which certificate such clerk of the peace, or other person acting as such, is hereby authorized and required, within one week after any such conviction shall have been returned to his office, to deliver to the collector of Excise, or other person or persons authorized to grant Excise licences within the district or place in which such conviction shall have taken place, setting forth a copy of such conviction signed by himself, for which he shall demand or receive no fee or reward whatsoever; and if any such clerk of the peace or other person acting as such as aforesaid shall neglect or omit to deliver such certificate as aforesaid, he shall for every such offence forfeit the sum of ten pounds."

On the retail beer

Sect. 23. "That where the licence for the sale of beer, cyder, or

(5). *Duties on licences.*

6 Geo. 4, c. 81.

Licence becoming void as aforesaid, retail spirit licence shall become void

perry by retail, to be drank or consumed upon the house or premises of the person or persons to whom the same is granted shall become void, and the person or persons thereupon disabled in such manner as before mentioned by this act, the licence for the sale of any spirits or foreign wine, or sweets or made wines, or mead or metheglin by retail, to be drank or consumed upon the house or premises thereupon granted, shall become null and void also to all intents and purposes; and in such case if the person or persons to whom the same respectively were granted shall sell any spirits or any foreign wine, or any sweets or made wines, or any mead or metheglin respectively by retail, to be drank or consumed upon the house or premises, after such conviction as aforesaid shall have taken place in manner before mentioned in this act, and every such licence as aforesaid has thereby become void, such person or persons shall incur the penalty for selling spirits or foreign wine, or sweets or made wines, or mead or metheglin, to be consumed upon the premises by retail without licence; and in all such cases, in the prosecution for the recovery of such penalty as aforesaid, such conviction shall be proved in such and the like manner as before specified by this act in a prosecution under similar circumstances for the sale of beer, cyder, or perry by retail, to be drank or consumed on the house or premises without licence."

On expiration of magistrate's authority to keep public-house within the year, a proportional part of duties to be returned.

Sect. 24. "And whereas the periods at which justices of the peace or magistrates, or other competent persons as aforesaid, are in the practice of granting such certificates or authorities as aforesaid to persons to keep common inns, alehouses, or victualling houses, are various, and at different times in different parts of the United Kingdom: and whereas the same do not in any manner correspond with the period at which Excise licences are granted, or for which the same continue in force; and that upon the expiration of such certificate or authority as aforesaid, the Excise licence to sell beer, cyder, or perry by retail, to be drank or consumed upon the house or premises where sold, granted upon such certificate or authority as aforesaid expires, and the Excise licences to sell spirits, foreign wines, sweets or made wines, and mead or metheglin by retail, to be drank or consumed upon the house or premises, which are granted upon such retail beer Excise licence do thereupon also expire: be it therefore enacted, that if the term for which any such certificate or authority as aforesaid is granted shall expire (no conviction as before mentioned having taken place) at any time within the first quarter of the current year for which such Excise licences as aforesaid respectively were granted, and no such certificate or authority shall be renewed or granted for the succeeding year, three fourth parts of the duties thereupon respectively paid by the person or persons to whom the same respectively were granted shall be returned to the person or persons then holding such licences, and carrying on trade or business in such house or premises; and if such certificate or authority as aforesaid shall expire as aforesaid at any time within the second quarter of the current year for which such licences as aforesaid respectively were granted, and shall not be renewed or granted for the succeeding year, one-half part of the duties paid thereon respectively shall be returned as aforesaid; and if such certificate or authority shall so expire as aforesaid at any time within the third quarter of the current year for which such licences as aforesaid respectively were granted, and shall not be renewed or granted as aforesaid, then one fourth part of the duties paid thereon respectively shall be returned as aforesaid; and the collector or other person or persons to whom the duty or duties payable on such licences respectively was or were paid at the time of granting the same, shall and are hereby respectively authorized and required to return such sum or sums of money as aforesaid to such person or persons as aforesaid, on application to him or them being thereupon made by such person or persons for that purpose."

Parties to put up

Sect. 25. "That all and every person or persons in the United King-

(5). *Duties on licences.*

6 Geo. 4, c. 81 their names and trades under penalty of 20*l.*

dom, required by any law or laws of Excise to make entry of his, her, or their premises, in order to exercise or carry on therein any trade or business for which an Excise licence is required, and who shall have taken out such licence, shall paint or cause to be painted, or shall place and fix in letters publicly visible and legible, and at least one inch long, in and upon his, her, or their entered premises, his, her, or their names respectively, at full length (or where there are partners or more than one person engaged in carrying on jointly the same trade or business, the name or style of the firm or partnership), and after such name or names the word 'licensed,' adding thereto the words necessary to express the purpose or trade or business for which such licence has been granted; and such person or persons shall cause such letters to be painted or placed and fixed in some conspicuous place on the outside of the front of his, her, or their said premises, over the principal outward door or gate, or entrance door thereto, and not more than three feet from the top of such outward door or gate, or entrance door; and if any such person or persons as aforesaid shall not paint or place and fix such letters as aforesaid, or shall not preserve and keep the same so painted, placed, and fixed, or shall not repaint or renew the same as often as necessity shall require, for the purpose of keeping the same in good order and condition during the continuance of his, her, or their licence, he, she, or they shall forfeit for every such offence the sum of twenty pounds; and if any person or persons not being licenced to exercise or carry on any trade or business for which a licence is required by this act shall put or have any such letters as aforesaid upon his, her, or their premises, or any letters importing that he, she, or they does or do exercise or carry on any such trade or business, or is or are licensed so to do, all and every such person or persons shall for every such offence forfeit the sum of twenty pounds."

Penalty for not taking out licences required by this act (*a*).

Sect. 26. "That if any person or persons shall make or manufacture, deal in, retail, or sell any goods or commodities hereinafter mentioned, or shall exercise or carry on any trade or business hereinafter mentioned, for the making or manufacturing, or dealing in, retailing, or selling of which goods or commodities, or for the exercising or carrying on of which trade or business, a licence is required by this act, without taking out such licence as is in that behalf required, he, she, or they shall for every such offence respectively forfeit and lose the respective penalty thereupon imposed, as hereinafter follows; (that is to say),

Penalties (*b*).

Every distiller or maker of low wines or spirits, and every rectifier or compounder of spirits, so offending respectively, shall respectively forfeit and lose five hundred pounds:

Every manufacturer of tobacco or snuff, so offending, shall forfeit and lose two hundred pounds:

Every person exercising or carrying on the trade or business of an auctioneer, or selling any goods or chattels, lands, tenements, or hereditaments by auction; every brewer of table beer only, for sale; every brewer of beer (other than table beer only) for sale; every brewer of beer for sale, who shall retail

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(*a*) These must be understood now as subject to the alterations of recent statutes. See *Section II. post*, as to dealers in each of the articles enumerated

(*b*) A., B., C., D. and E. carried on trade in partnership as distillers, and C. alone carried on the business of a retail dealer in spirits within two miles of the distillery, contrary to the 4 Geo. IV. c. 94, ss. 132, 133; and his name was not inserted as one of the partners in the distillery in the Excise-book, or licence, as required by the 6 Geo. IV. c. 81, s. 7; held, that these being mere revenue regulations, the breach of them by one of the partners, with the knowledge of the others, did not render the trade carried on by the five so illegal as to deprive them of the right to recover the price of spirits sold by them, or for the breach of a guaranty for the due accounting of an agent, to whom they had consigned the spirits for sale. (10 *B. & Cres.* 93; 5 *Man. & R.* 114, *S. C.*; and see 3 *Term Rep.* 560).

(5). *Duties on licences.*

6 Geo. 4, c. 81.

such beer to be consumed elsewhere than on his, her, or their premises; every person, not being a brewer of beer, who shall sell strong beer only in casks, containing not less than four gallons and a half, or in not less than two dozen reputed quart bottles at one time, to be drank or consumed elsewhere than on his, her, or their premises; every maker of wax or spermaceti candles, for sale; every chandler or maker of candles for sale, other than wax or spermaceti candles; every glass-maker; every tanner; every tawer; every dresser of hides or skins in oil; every currier; every maker of vellum or parchment; every maltster, or maker of malt; every maker of paper, pasteboard, or scaleboard; every printer, painter, or stainer of paper; every calico printer, and every printer, painter, or stainer of linens, cottons, stuffs, or silks; every maker of soap for sale; every dealer in spirits, not being a retailer thereof; every retailer of spirits in Ireland, being licenced to trade in, vend, and sell coffee, tea, cocoa-nuts, chocolate, or pepper; every starch maker for sale; every maker of sweets or made wines, or of mead or metheglin, for sale; every maker of vinegar or acetous acid, for sale; every dealer in foreign wine; and every wire-drawer or other person who shall draw or cause to be drawn any gilt or silver wire, commonly called big wire, so offending respectively; shall respectively forfeit and lose the sum of one hundred pounds:

Every person who shall sell beer, cyder, or perry by retail, to be drank or consumed in his, her, or their house or premises; every retailer of spirits, not being a retailer of spirits in Ireland, duly licenced to sell coffee, tea, cocoa-nuts, chocolate, or pepper; every retailer of foreign wine; every retailer of sweets or made wines, or of mead or metheglin; every person trading in or selling coffee, tea, cocoa-nuts, chocolate, or pepper; every dealer in or seller of tobacco or snuff; every maker of stills in Scotland or Ireland; every person in Scotland or Ireland, not being a distiller, rectifier, or compounder of spirits, who shall keep or use any still for the carrying on the trade of a chemist, or any other trade or business requiring the use of any still or stills; so offending respectively, shall respectively forfeit and lose the sum of fifty pounds."

Occupiers of premises to be deemed retailers in certain cases.

Sect 27. "That if any spirits shall be sold or delivered in any quantity less than two gallons, or if any beer, wine, cyder, perry, sweets, mead, or metheglin, or vinegar, or any other goods for the retail of which a licence is by this act required, shall be sold by retail in any house or premises, or in any part of any house or premises, by any person or persons unknown, or who shall not be licenced for that purpose according to this act, the occupier of such house or premises, or part of any house or premises, where such spirits or other liquors or goods shall be so sold as aforesaid, if but one occupier only, and if more than one, then the several occupiers thereof, being privy or consenting thereto, shall be deemed and taken to be the retailer or retailers of such spirits, or other liquors or goods, and as such shall be subject and liable to the penalties imposed upon persons for the sale of spirits, or such other liquors or goods, by retail, without licence."

Penalty for not producing licence, 20*l.*

Sect. 28. "That if any person or persons licensed to exercise or carry on any trade or business, or make or sell any goods for which an Excise licence is required, shall not produce and deliver such licence to be read and examined by any officer or officers of Excise, within a reasonable time after such officer or officers shall demand the production thereof, such person or persons shall for each and every such offence forfeit the sum of twenty pounds."

Informer to be paid as commissioners shall direct, a sum not exceeding 10*l.* in certain

Sect. 29. "And for the encouragement of those who shall discover offences committed against the laws relating to Excise laws, be it further enacted, that where any person or persons shall be lawfully convicted of any offence in carrying on any trade or business, or making or selling any goods without licence, for the carrying on of which trade or business, or the making or selling of which goods, a licence or licences is or are required by this act, and the pecuniary penalty imposed for such offence shall not be paid and cannot be levied, it shall and may be lawful for the commissioners of Excise to cause such reward as they shall

(5). *Duties on licences.*

6 Geo. 4, c. 81.

think fit, not exceeding ten pounds in each case, to be paid to the several and respective persons who shall appear to them to be entitled thereto as informers, out of any moneys in their hands arising by any penalties or forfeitures incurred under the laws of Excise."

This act not to prejudice universities, vintner's company, or borough of St Albans.

Sect. 30. "Provided always, that nothing in this act contained shall in anywise prejudice the privileges heretofore used and enjoyed by any university in the United Kingdom of Great Britain and Ireland, or the respective chancellors or scholars of the same respectively, or their successors, or the master, wardens, freemen, and commonalty of the vintners of the city of London, or other city or town corporate in any part of the United Kingdom, or the mayor or burgesses of the borough of St. Albans, in the county of Hertford, or their successors, but that they may respectively use and enjoy such privileges as they have heretofore respectively lawfully used and enjoyed the same."

Former regulations to be in force, except where repealed or altered.

Sect. 31. "That all powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things, which in and by any act or acts of Parliament relating to the revenue of Excise in force in Great Britain or Ireland respectively on or immediately before the said 5th day of July, 1825, are provided, settled, or established for securing, enforcing, managing, raising, levying, collecting, paying, mitigating, or recovering, adjudging, or ascertaining the Excise duties or penalties thereby granted or imposed, and for preventing, detecting, and punishing frauds relating thereto, other than and except in such cases for which other penalties, regulations, or provisions are made or prescribed by this act, shall be exercised, practised, applied, used, and put in execution in and for the managing, raising, levying, collecting, mitigating, adjudging, ascertaining, recovering, and paying the several duties and penalties respectively hereby granted or imposed, and for the due enforcement of all other matters and things herein contained, so far as the same are not repugnant to or inconsistent therewith, as fully and effectually to all intents and purposes, as if all and every the said powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things were particularly repeated and again enacted in this present act."

Penalties and forfeitures how to be recovered and applied.

Sect. 32. "That all penalties and forfeitures imposed by this act (save and except in such case where any special provision is herein made) shall be sued for, levied, recovered, mitigated, and distributed by such ways, means, and methods, and in such manner, as by any law or laws of Excise in force is or shall in that behalf be directed, provided, and enacted in Great Britain and Ireland respectively."

Former inconsistent regulations repealed.

Sect. 33. "That all powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things provided for or contained in any act or acts of Parliament in force relating to the revenue of Excise in Great Britain or Ireland respectively, on or immediately before the 5th day of July, 1825, expressly repealed, altered, or re-enacted by this act, or which are repugnant to or inconsistent with the several matters, clauses, provisions, and regulations of this act, any or either of them, shall, and the same are hereby respectively, from and after the said 5th day of July, 1825, declared to be repealed, and shall no longer be put in force or observed in any part of the United Kingdom."

Duties on licence for selling plate, and on hawkers, &c., not repealed by this act (*a*).

Sect. 35. "Provided always, that nothing in this act contained shall extend or be deemed or construed to extend to repeal the Excise duties on licences for selling or making gold or silver plate in Ireland, or on licences for exercising the trade or calling of a hawker, pedlar, petty chapman, or other trading person going from place to place in Ireland; or on licences to travelling tinkers or persons hawking about tea for sale in Ireland; or on licences for servants or other persons employed in carrying goods of any such hawker or pedlar; or on horses or other beasts bearing or drawing burthen, which such person shall so travel with in

(*a*) See 6 Geo. IV. c. 118; but now, however, the 7 Geo. IV. c. 53, s. 6.

(5). *Duties on licences.*

6 Geo. 4, c. 81.

Ireland; nor to repeal the duties on Excise licences to persons letting horses to hire, for the purpose of travelling post in Ireland; or on Excise licences to persons trading in, vending, or selling gold and silver plate in Great Britain; anything hereinbefore contained to the contrary notwithstanding."

Spirit and plate licences.

The 6 Geo. IV. c. 80, contains several regulations relative to spirit licences, which will be stated with the more recent enactments, under the head "*Spirits.*"

Plate licences were provided for by 6 Geo. IV. c. 118.

Licences for commanders of passage vessels.

The 9 Geo. IV. c. 47 (amended by 4 & 5 Will. IV. c. 75, s. 10) contains enactments as to licences for commanders of vessels and packets, &c. *See post, Section II.* tit. "*Passage Vessels.*"

Duties when and where to be paid.

The 4 & 5 Will. IV. c. 51, s. 11, enacts, "That every person carrying on any trade or business under or subject to any law or laws of Excise, shall pay and clear off the duty or duties in that behalf imposed by any act or acts of Parliament respectively and charged upon or incurred by such person at such time and place, and to such person respectively as shall for that purpose be specially directed by any act or acts of Parliament relating to such duties, or as shall be from time to time directed by the commissioners of Excise, whether payment of such duties shall have been or shall be secured by bond or otherwise, in pursuance of any act or acts of Parliament or not; and if any such person shall not pay and clear off such duty or duties at such time and place, and to such person respectively as aforesaid, or upon demand made under order of the commissioners of Excise by any general surveyor of Excise, where the trade or business shall be carried on within the limits of the chief office of Excise, or elsewhere by the collector of Excise in whose collection such trade or business shall be carried on, or the officer of Excise in charge for the time being of such collection, or by any officer of Excise authorized and directed by such collector or officer in charge to make such demand, whether such demand shall be made personally of such person, or shall be left at his dwelling-house, or at the premises where such duty or duties shall have been charged, every such person shall forfeit and lose double the value of the duty or duties so neglected to be paid and cleared off as aforesaid."

Powers of mitigating double duty.

And by sect. 20, commissioners of Excise and justices are not authorized to mitigate the penalty of double duty for non-payment of Excise duties.

(6). *Complaints of overcharges of duty, &c.*

4 & 5 Will. 4, c. 51.

(6.) Complaints of Overcharges of Duty, &c.

The 4 & 5 Will. IV. c. 51, intituled, "*An Act to amend the laws relating to the collection and management of the revenue of Excise,*" by sect. 26 repeals the 7 & 8 Geo. IV. c. 53, s. 120, as to complaints of overcharge, and enacts in the following section; viz.

Complaints of overcharges and overpayments.

Sect. 27. "That it shall be lawful for the commissioners of Excise, or any three or more of them, within the limits of the chief office of Excise, and for any two or more justices of the peace in any other part of the United Kingdom, within whose jurisdiction respectively any person chargeable with or liable to the payment of any duty of Excise shall have been charged with or paid such duty, upon complaint to them respectively made by any person or persons of any overcharge made by any officer of Excise, or of any overpayment made by any such person, within twelve calendar months next after the making of such overcharge or overpayment, and also in any case in which by any act of Parliament relating to the revenue of Excise, any persons shall be entitled to any return of any duty of Excise paid by or on behalf of such person, upon the like complaint by such person within the time in that behalf respectively limited by law for exhibiting such complaint, and such commissioners and justices are hereby respectively authorized and required, in every such case, to hear, adjudge, and determine such complaints, and to examine the witness or witnesses upon

oath who shall be thereupon produced, as well on behalf of the person making complaint as on behalf of his Majesty and of all parties therein concerned, and shall thereupon, by warrant under their hands, discharge or acquit the complainant of so much of such overcharge or overpayment as shall be made out and proved before such commissioners of Excise or justices of the peace respectively to have been overcharged or overpaid, or wrongly paid, or shall order such amount of duty as the party shall appear to be entitled to have returned to him to be returned and paid; and if any person in whose favour any such judgment shall be given, shall, before acquittal of any overcharge, have paid any money for or in respect of such overcharge, and in case of any overpayment, or order to return any duty of Excise to a return of which the party may be entitled, the commissioners of Excise shall, and they are hereby required, upon such acquittal or order as aforesaid, to repay to such person or persons out of the public monies in their hands, or, at their discretion, to allow out of the next duties becoming payable by such person or persons, so much money as shall be specified in such judgment or order as overcharged, overpaid, or wrongly paid, or to be returned, anything in any act or acts to the contrary notwithstanding. Provided always, that no such complaint shall be heard before the said commissioners of Excise, unless the same shall be entered by or on behalf of the complainants, in a book to be kept for that purpose in the office of the solicitor of Excise, at the chief office of Excise, stating the particulars thereof, and the name and place of residence or place of business of such complainant; and upon every such complaint being so entered, not less than six days' notice shall be given by the commissioners of Excise of the time and place by them appointed for the hearing of such complaint; and if such complainant shall not appear at the time and place appointed for the hearing of any such complaint, it shall be lawful for the said commissioners, or any three or more of them, to dismiss such complaint, upon proof of such notice of the time and place appointed for the hearing of such complaint having been given to such complainant, or left at the place mentioned in such complaint book as aforesaid as the place of residence or place of business of such complainant; and no such complaint shall be heard before any justices of the peace unless anotice in writing of the time and place of hearing thereof shall be given to the collector of Excise in whose collection, or to the supervisor of Excise in whose district the subject-matter of complaint shall have arisen, eight days at least before the time appointed for the hearing of such complaint, which notice shall contain and set forth the exact sum which is complained of as being an overcharge, and the date when the charge was made on which such overcharge is said to have arisen, or the exact sum complained of as being an overpayment, and the date when such overpayment was made, or the exact amount of duty claimed to be allowed or returned, and on what account, as the case may be; and in every case respectively the ground of complaint of such overcharge or overpayment, or claim of return, or allowance of duty, shall be set forth in such complaint; provided also, that the payment of any duty with which any such complainant as aforesaid shall have been charged, or any proceedings for the recovery or payment of any such duty, shall not be delayed or suspended by reason of the making of any complaint, or overcharge of such duty, or of the same being depending."

(6). *Of overcharges, &c.*

4 & 5 Will. 4, c. 51.

And by the 4 Vict. c. 20, intituled, "*An Act to alter and amend certain laws relating to the Collection and Management of the Duties of Excise,*" it is enacted by—

4 Vict. c. 20.

Sect. 33, "That no complaint of any overcharge or overpayment of any duty of Excise shall be made to the commissioners of Excise within the limits of the chief office of Excise, or to any justices of the peace in any other part of the United Kingdom, by any person liable to the payment of any duty of Excise, in any case where the subject matter of

Complaint of overcharge or overpayment of duty not to be made to Commissioners of Excise or justices of the

(6). *Of overcharges, &c.*

4 Vict. c. 20.

peace, in cases where the question shall be the liability of goods to duty, or rate of duty, or mode of charging the duty.

such complaint shall be a question whether any goods or commodities are goods or commodities liable to be charged with a duty of Excise, or are liable to a higher or lower rate of duty, or as to the mode or manner of charging the duty of Excise on any goods or commodities; and it shall not be lawful for the said commissioners or justices to try or decide any such question on any such complaint, but all proceedings thereon, allowing any overcharge or over-payment of duty, and all and every warrant issued in pursuance thereof, shall be null and void, any thing in the said recited act of the fifth year of the reign of his late Majesty king William the Fourth notwithstanding: Provided always, that where any person charged with any duty of Excise shall question the legality of the charge, on the ground that the goods or commodities charged are not goods or commodities liable to a duty of Excise, or are subject to a different rate of duty than the rate of duty charged, or on account of the mode or manner in which such duty shall have been charged, and shall, within six days after the return of the officer of Excise, give notice to the commissioners of Excise, or to the collector or supervisor of Excise, within the limits of whose business such charge shall have been made, of his objection to the charge, and the ground of such objection, such person shall not be concluded by the return or charge of the officer of Excise, but such person shall be at liberty, on any information filed or other proceedings taken to recover the payment of any duty or portion of duty charged on and refused to be paid by him, in his defence to dispute such charge, and his liability to the payment of the amount of duty specified therein, or of any portion thereof."

(7). *Of Entries, &c.*

(7). Of Entries and Seizures.—Penalties.—Administering Oaths.—Perjury.—Fraudulent Removal and Concealment.—Assisting Officers.—Obstructing Officers.—Indictments, &c.

4 & 5 Will. 4, c. 51. In what manner entries of premises are to be made (a).

The manner of *making an entry* of premises subject to the survey of the Excise authorities, as directed by the 7 & 8 Geo. IV. c. 53, s. 18, is repealed by the 4 & 5 Will. IV. c. 51, s. 4, and in lieu thereof it is enacted, by the 4 & 5 Will. IV, c. 51, s. 5, "that every person carrying on any trade or business under or subject to any law or laws of Excise, and required by any act or acts relating to the revenue of Excise to make entry at the next office of Excise, or to give notice to the officers of Excise of any house, building, place, vessel, or utensil used in carrying on such trade or business, shall make such entry by delivering such true and particular account as by the act or acts relating to such trade or business is required to the officer of Excise in whose survey such house, building, place, vessel, or utensil shall be intended to be used; and such officer having received such entry shall copy the same into the book kept and known by the name of the general entry book for the division or ride in which such house, building, room, or place, vessel or utensil shall be intended to be used; and the supervisor of the district shall examine and compare the copy so made in such book as aforesaid with the original entry; and such officer on his being removed from such division or ride, shall deliver over to the officer succeeding him in such station such book and all such original entries."

Penalty for using premises or utensils without having made entry.

Sect. 6. "That every person carrying on any trade or business under or subject to any law or laws of Excise, who shall make use of any house, building, or place, vessel or utensil, of which entry is required to be made or notice given by any act or acts relating to the revenue of

(a) The 3 & 4 Vict. c. 61 (the Beer Act) contains provisions respecting the mode of making entries by persons licensed to retail beer or cider. See sections 9, 10, & 11 of that Act; *ante*, tit. "*Alehouse*," and *post*, tit. "*Excise*," *Section II.* "*Ale and Beer.*"

For mode of entry by Tobacco and Snuff dealers, see *post*, "*Tobacco*," and the 3 & 4 Vict. c. 18, ss. 2 and 3.

Excise, without having made entry thereof in manner hereinbefore directed, shall for every such unentered house, building, or place, vessel or utensil, forfeit 200*l.*"

(7). *Of entries, &c.*

4 & 5 Will 4, c 51.

Sect. 7. "That every person carrying on any trade or business, under or subject to any law or laws of Excise, who, having made entry of any house, building, or place, vessel or utensil, or other thing, shall, in the carrying on such trade or business, fraudulently make use of any such house, building, or place, vessel or utensil, or other thing for any other or different purpose than the particular use or purpose for which the same shall have been entered, shall forfeit one hundred pounds."

Penalty for using premises or utensils for other purpose than that for which entered.

Sect. 8. "That when any person or persons shall have made entry of any building, room, place, vessel, or utensil for the carrying on any trade or business in respect of which any entry is by any act or acts of Parliament relating to the revenue of Excise required, it shall not be lawful, during the continuance of such entry, for any other person or persons (except persons becoming partners in the same trade or business in respect of which the entry shall already have been made) to make entry of the same building, room, or place, vessel or utensil, for the carrying on of any other trade or business of the same or any other description subject to the survey of Excise, but every such subsequent entry made whilst such former entry is in force shall be null and void to all intents and purposes."

Not more than one entry to be in force for same premises.

Sect. 9 provides and enacts, "That where any person who shall have made entry of any premises for carrying on any trade or business subject to the survey of the Excise, shall abscond or shall quit possession of such premises, and discontinue the trade or business in respect of which such entry was made without having withdrawn such entry, it shall be lawful for any other person, with the consent and approbation of the commissioners of Excise, to make entry of the said premises for carrying on any trade or business subject to the survey of the Excise, and in such case the former entry shall be deemed to have been withdrawn, and shall become null and void."

If trader absconds or quits entered premises without withdrawing the entry, any other person may, with consent, make entry of the premises.

The 4 Vict. c. 20, intituled, "*An Act to alter and amend certain Laws relating to the Collection and Management of the Duties of Excise,*" after reciting the 7 & 8 Geo. IV. c. 53, and the 4 & 5 Will. IV. c. 51, and that they required to be altered and amended, proceeds in—

4 Vict. c 20.

Sect. 5, after reciting that whereas doubts have arisen whether goods found in unentered places or premises have in some instances been thereby forfeited, to declare and enact, "That all stills, backs, vats, coppers, presses, machines, and vessels and utensils, of which entry is by any law or laws of Excise required to be made, and which shall not be duly and lawfully entered, and all goods and commodities found in any such unentered still, back, vat, copper, press, machine, or vessel or utensil, or in any house, warehouse, storehouse, room, or place required to be entered, and not duly and lawfully entered, shall be forfeited."

All vessels, &c. not duly entered, and all goods found in unentered premises, declared forfeited.

6. "That where any trade or business, in respect of which an entry is by any law or laws of Excise required to be made with the officers of Excise, is carried on by any joint stock company or corporation, such entry of the buildings, places, and vessels and utensils, shall be made and signed by the directors or managers or committee of such joint stock company or corporation, or if the number shall exceed four, then by four at least of such directors or managers or committee, for and on behalf of the company or corporation; and no entry by any clerk or servant, or by any less number of directors or managers or committee, where they shall exceed four, shall be a legal entry; and the directors or managers or committee signing such entry shall, as regards the revenue of Excise, be deemed and taken to be the real owners of the trade or business, and as such shall be jointly and severally liable to all duties of Excise charged and to all penalties and forfeitures incurred in respect of such trade or business."

Managers or directors of joint stock companies or corporations to make entry on behalf of the company.

Sect. 7. "That it shall be lawful for any married woman whose hus-

Married women, whose husbands

(7). *Of entries, &c.*

4 Vict c. 20.

may become insane or incapable of transacting their own affairs, or who may be separated from them and out of the kingdom, may, with consent of the commissioners of Excise, make entry of premises.

band shall become insane or idiot, or be otherwise rendered incapable of transacting his affairs, or whose husband shall be separated from her and be out of the limits of the United Kingdom, to make entry, with the consent and approbation of the commissioners of Excise, of any building, place, vessel or utensil, for the carrying on of any trade or business in respect of which any entry is required by any law or laws relating to the revenue of Excise; and every married woman so making entry shall be subject and liable to all duties, penalties, and forfeitures imposed by any act relating to the revenue of Excise, and to the trade or business in respect of which such entry shall be made; and any bond required by any act or acts relating to the revenue of Excise, which shall be entered into by any such married woman, shall be good, valid, and effectual, notwithstanding her coverture, as if she was sole and unmarried: Provided always, that it shall not be necessary or required, on the trial or hearing of any information or proceeding against any such married woman for the recovery of any duty or penalty or forfeiture, or upon any such bond, to prove or give evidence of the insanity, idiotcy, or incapacity of or separation from or absence of the husband."

7 & 8 Geo. 4, c. 53. What shall be sufficient proof of such entry.

By the 7 & 8 Geo. IV. c. 53, sect. 19, "That where, upon the trial of any indictment, information, action, suit, or prosecution, or upon any other legal or judicial proceeding whatsoever, any such original entry shall be tendered or offered in evidence, it shall be lawful to prove by any credible witness the signature or signatures to such entry to be the handwriting of the person or persons by whom or in whose name or names such entry was made; and that in any such case it shall not be necessary to prove such entry by the testimony of the officer who received, or of the person who may have attested such signature or signatures, or the receipt of such entry; and if upon any trial as aforesaid, or upon any other legal or judicial proceeding, any question shall be made or shall arise, whether any building or place, or any vessel or utensil, of which entry is required to be made under this act, or any other act or acts of Parliament relating to the revenue of Excise, was entered by the person or persons by whom the same shall have been used, it shall be deemed and taken to be sufficient proof of such entry, if upon the production of any credible witness of the entry book of the division or ride in which such building, place, vessel, or utensil shall have been used, such building, place, vessel, or utensil shall be found, or shall appear in the copy, or what shall purport to be the copy in such book of any entry thereof, made by such person or persons as aforesaid; and if, upon the production of such book, no such building, place, vessel or utensil shall be found, or shall so appear therein, or if found shall so appear to have been entered for another or different purpose than the purpose for which the same shall be charged or alleged to have been used by such person or persons, every such building, place, vessel, or utensil shall be deemed and taken to be and * unentered to all intents and purposes whatsoever, unless by other evidence the contrary be made appear; any law, custom, or usage to the contrary thereof notwithstanding: Provided always, that where in any indictment or information it shall be averred that any person or persons was or were a trader or traders under any law or laws of Excise, it shall not be necessary to prove the same by the production or proof of any entry made by or in the name of such person or persons."

*Sic. In the act the word "and" is used by mistake instead of "as."

No entry to be legal except in name of real owner, but ostensible owner shall be liable.

Sect. 20. "That no entry of any building, place, vessel, or utensil made by any person or persons under any act or acts of Parliament relating to the revenue of Excise, shall be or be deemed or taken to be a legal entry thereof, unless the same shall have been made by and be in the name or names of a person or persons who shall at the time of making such entry, have attained the age of twenty-one years, and who shall be the true and real owner or owners of the trade or business therein, or thereby carried on, or in respect of which such entry of such building, place, vessel, or utensil shall have been made: Provided

(7). *Of entries, &c.*

always, that the person or persons who shall act as the visible owner or owners of any trade or business in respect of which any such entry shall have been made, or by whom the same respectively shall be occupied or used, or who shall have the principal management thereof, shall in all respects, and notwithstanding the minority of such visible owner or owners (*a*), be subject and liable to all duties, penalties, and forfeitures imposed by this act, or any other act or acts of Parliament relating to the revenue of Excise, or any part thereof, to which the real owner or owners of such building, place, vessel, or utensil, or of such trade or business therein or thereby carried on, would have been liable; and all stock in such trade or business, and all materials, vessels, and utensils which shall then and there be found in or upon such building or place, to whomsoever the same shall then and there belong, shall be subject to and be charged with all such duties, penalties, and forfeitures" (*b*).

7 & 8 Geo. 4, c. 53.

Sect. 21. "That every person making entry of any building, place, vessel, or utensil under any act or acts of Parliament relating to the revenue of Excise, shall in every such entry distinguish and describe every such building, place, vessel, or utensil, by a particular letter or number, and shall, to the satisfaction of the supervisor or surveyor of the district or division, paint such respective letter or number in a

In the entry of premises, vessels, &c. the same to be distinguished by letters or numbers, and fixed pipes to be painted, under penalty of 100*l.* (*c*).

(*a*) Neither minority nor coverture is any defence in general for a violation of Excise laws. (4 *Bla. Com.* 308; 2 *B. & P.* 530; 8 *T. R.* 545; 2 *Stra.* 1120).

(*b*) 49 Geo. III. c. 81, s. 8.

(*c*) See 58 Geo. III. c. 65, s. 7. The following are forms of a common brewer's, and a spirit-dealer's and tallow-chandler's entries:—

(No. 1.)

1. Form of a common brewer's entry.

I, A. B., of , in the county of , do hereby make entry of a brewhouse, situate in street, marked B. H., containing two coppers, marked Nos. 1 *and* 2, *with one cock to each, which discharge into mash-tun and hop-back, one reservoir with two pipes marked p., leading into the two coppers. One mash-tun marked M. T. with four pipes, three of which connecting with one main pipe, marked p., discharge into U. B. and R. No.* 2, *the other, marked p., discharges into brewhouse. One hop-back, marked H. B., with two cocks, which discharge upon the backs marked* 1 *B. and* 2 *B., and one pipe, marked p., leading into tun-room No.* 2, *for scalding casks. One round, marked No.* 1, *with one pipe, marked p., connected with the two permanent cleansers in T. R. No.* 1. *Two cocks which discharge into T. R. No.* 1.; *also one round, marked U. B., and R. No.* 2, *with a pipe, marked p., connected with engine, and one cock, which discharge into T. R. No.* 2. *Two backs, marked* 1 *B. and* 2 *B., with four cocks: two discharge into R. No.* 1, *one into R. and U. B. No.* 2, *and one into filling-up back belonging to permanent cleanse in T. R. No.* 1. *One engine with two pipes, one sucking out of liquor-well, one out of R. No.* 2, *and one raising pipe, all marked p., which charge reservoir. One lead-well, into which the stillions discharge themselves. One filling-up back, marked F. B., with one pipe to the same, which charge the permanent cleanse marked p. One tun-room, marked T. R. No.* 1. *One tun-room, marked T. R. No.* 2. *One store-room, marked S. T. No.* 3. *The same are for the purposes of brewing of beer as a common brewer, for sale.*

Dated this 1*st day of Jan. A. D.* 1830. *A. B.*

(No. 2.)

2 Form of a brandy dealer's entry.

I, A. B., brandy-dealer, of , in the county of , do hereby make entry of one room, marked No. 1, *for foreign spirits: also one room, marked No.* 2, *for British spirits: and in the which room, marked No.* 1, *are*

1	*Store Cask, marked*		*F.*	*No.* 1.	16	*Gallons.*
1	*Do.*	*Do.*	*F.*	*No.* 3.	52	*Do.*
1	*Do.*	*Do.*	*R.*	*No.* 1.	55	*Do.*
1	*Do.*	*Do.*	*R.*	*No.* 2.	57¼	*Do.*
1	*Do.*	*Do.*	*R.Sh.*	*No.* 1.	8¼	*Do.*

(7). *Of entries, &c.*

7 & 8 Geo. 4, c. 53.

large and distinct character upon some convenient and conspicuous part of the outside of the walls or doors of every such building and place, and upon some convenient and conspicuous part of the outside of every such vessel and utensil, and shall continue the same so painted, and from time to time and when occasion shall require, or when requested by the supervisor or surveyor of Excise of the district or division, shall renew the same, so long as the entry thereof shall remain uncancelled, so that such letter or number so painted may be easily and distinctly observed and known by the officers of Excise; and wherever any such person shall use or employ, in any entered building or place, any fixed pipe, every such person, when required by the supervisor or surveyor of Excise, by a written notice, shall paint and continue painted every such pipe, throughout its whole length and over its whole exterior surface, with a distinct oil colour or oil colours, to the satisfaction of the supervisor or surveyor of Excise of the district or division; and every such person, after such notice, shall also deliver, in addition to the entry required to be made by such person of any such building, place, vessel, or utensil, and as part thereof, a drawing or drawings, or description, distinctly showing or exhibiting and explaining the course, direction, construction, and use of every such pipe respectively, and of every branch thereof, and of every cock therein, together with every place, vessel, and utensil respectively, from and to or with which the same shall lead or communicate: Provided always, that all pipes or parts of pipes used for the same purpose only shall be painted of the same colour; and if any such person shall use any building, place, vessel, or utensil, by him or her entered, which shall not be so distinguished and described as aforesaid, or which shall not have such letter or number so painted and continued thereon as aforesaid, or shall use any fixed pipe in any building or place so entered, which shall not be so painted, and so shown or exhibited and explained in any drawing or drawings, or description, or different from or disagreeing with any drawing or description by him or her delivered thereof, every such person using such building, place, vessel, utensil, or pipe as aforesaid, shall for every such offence forfeit and lose, over and above all other penalties, the sum of one hundred pounds."

And a drawing, &c. to be delivered.

Penalty, 100*l.*

Officer may enter any building or other place used for carrying on any trade subject to survey (if by night in the presence of a constable), for the

Sect. 22. "That it shall be lawful for any officer of Excise and his assistants at any time, either by night or day (but if between the hours of eleven at night and five in the morning, then upon request, and in the presence of a constable or other *lawful* peace officer (*a*), except in such cases as are otherwise specially provided for by any other act or acts of Parliament relating to the revenue of Excise), to enter into and

---

In room, marked No. 2, *are*
1 *Store Cask, marked X. No.* 1. 70 *Gallons.*
1 *Do. Do. X. No.* 2. 10 *Do.*
All for the purpose of sale, situate in street, . Witness my hand, this 17*th day of June,* 1828. *A. B.*
Attested by G. H. officer, June 17, 1828.

(No. 3.)

3 Form of a tallow chandler's entry.

I., C. D., do hereby make entry of one candle-office, marked C. H., one copper, marked C., one dipping mould, marked D. M., one mould closet containing 198 *pipes, marked M., situate in the yard adjoining my dwelling-house, and situate in the street, in the parish of , in the county of . Witness my hand, this* 11*th day of February,* 1828. *C. D.*
Attested 11*th Feb.* 1828. *E. F.*

(*a*) He must be a peace-officer at the time. (*Hill* v. *Barnes*, 2 *Bla. R.* 1185).

(7). *Of entries, &c.*

7 & 8 Geo. 4, c. 53.

remain so long as such officer may think fit, for the purposes hereinafter mentioned, in any building or place belonging to or used by any person or persons for the purpose of carrying on any trade or business under or subject to any law or laws of Excise, or belonging to or used by any person or persons making or required to make any entry of such building or place under any such law or laws; and it shall be lawful for such officer of Excise and his assistants to inspect any such building or place, and to take such account as such officer shall deem necessary, according to the several laws, provisions, and regulations relating thereto, of all matters and things, and of all works, vessels, utensils, goods, and materials belonging or in anywise appertaining to such trade or business; and it shall be lawful for such officer, and he is hereby authorized and required, to charge any duty or duties imposed by any act or acts of Parliament relating to the revenue of Excise which shall be then chargeable upon the person or persons carrying on such trade or business, and of such account and charge of duty to make a return or report in writing to the commissioners of Excise, and to the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland, or to such person as the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively may direct; such officer, in all cases where the minutes of the entries made by him in taking such account shall not appear on any such specimen left as hereinafter mentioned, giving (if demand be made thereof in writing at the time of taking such account) a true copy of such charge, in writing under his hand, to the person or persons carrying on such trade or business, and every such return and report of such officer as aforesaid shall be and shall be taken to be a charge of such duty or duties upon such person or persons."

purpose of inspecting the same, or taking any account, and charging the duty of Excise.

Such officer is to charge duty, &c.

Sect. 23. "That the supervisor or surveyor of Excise in whose district or division any person or persons shall be who shall carry on any trade or business under or subject to any law or laws of Excise, or the officer of Excise under whose survey such person or persons shall be, may leave and deposit, in some conspicuous and open part of some building or place entered by such person or persons for such trade or business, a certain book or paper called a *specimen*, for recording therein minutes of the entries made by the officers respectively who survey the premises of such person or persons, or the trade or business of such person or persons, in the books of such officers, of the state of the manufactory, and of the accounts and particulars of the survey thereof, at any time taken by such officers respectively, and the names and minutes of survey and observations of any other officer who may visit or inspect such entered premises; and every officer of Excise shall at all times have free access to such book or paper, with liberty and power to remove or take away the same, leaving a new book or paper for the like purpose as aforesaid in lieu thereof; and if any person not being an officer of Excise shall remove or take away, or shall conceal or withhold any such book or paper, or shall damage or destroy the same, or alter, deface, or obliterate any entry therein, or shall make any entry

Specimen books may be left by officers on premises of traders, and not to be removed or destroyed under penalty of 200*l*. (*a*).

(*a*) As to this book, see *R.* v. *Grimwood*, 1 *Price*, 369; and see form of specimen book and notes thereon, *post*, 668. The *specimen book* is in form a small folio memorandum book, each leaf about three inches broad and eight inches long, each page impressed with a red Excise stamp, and paged or numbered, 1, 2, 3, &c., and is in this state delivered to the surveying officer, who on the first leaf writes the trader's name, trade, and residence, and the collection, district, division, or ride for which he is acting. This book is left on the trader's premises to enable the surveying officer or his superiors to register the operations of the trader. The duty of the surveying officer as to the entries he is to make in this book are pointed out by 7 & 8 Geo. IV. c. 53, s. 23, and the book and entries are usually in the following form:—

Specimen book.

(7). *Of entries, &c.*

7 & 8 Geo. 4, c. 53.

Penalty on hindering officers, &c. in execution of duty.

therein, every such person so offending shall for every such offence forfeit and lose the sum of two hundred pounds."

Sect. 24. "That if any person shall oppose, molest, obstruct, or hinder any officer of Excise, or any person employed in the revenue of Excise, or acting in the aid or assistance of any officer or person so employed, in the due execution of this act or any other act or acts of Parliament relating to the revenue of Excise, or in the execution of any of the powers or authorities by this act or any such act or acts given or granted to such officer or person so employed, every person so offending shall for every such offence forfeit and lose the sum of two hundred pounds."

Form of specimen book left and kept at brewer's premises under 7 & 8 Geo. 4, c 53, s. 23.

[4.]	[5.]
	Office Stamp.
July.	July 9.
5 e p 6 silent transfer.	9 m p 5 H and Bl (*g*) out Crs silent (Bro) U Bril no length.
6 m p 6 silent (*a*).	9 m p 7 1 R X (*h*) 2 R T Crs silent length by.
6 e p 6 silent.	9 e p 2 1 R X (*i*) cleansed T Crs silent.
7 m p 6 silent.	9 e p 8 1 R X (*k*) Crs silent.
7 e p 7 silent.	10 m 6 cld X (*l*) and silent.
8 m p 6 Crs (*b*) L M T uncased qrs 10 0 0	10 e p 8 silent (*m*).
8 p n Crs (*c*) LL gds.	10 e p 8 silent.
8 e p 4 2 C W (*d*) 1 C L L gds.	11 m p 6 silent sitting day July 20th duty and licence 300*l.* 1*s.*
8 e p 6 H out (*e*) 2 C W pumping in 1 C silent (53) hops.	
8 e p 10 H and blw (*f*) out, Crs silent (Bro) U Bril no length.	

(*a*) The 6 m p means the 6th day of July, morning, past six o'clock; and the word *silent*, that the brewing utensils are not in use.

(*b*) Crs L M T uncased qrs. 10 0 0, means Coppers filled with Liquor, Mash-Tub not in use, and malt not wetted.

(*c*) Coppers filled with liquor. Liquor on the malt.

(*d*) 2nd Copper filled with Wort. 1st Copper, Liquor. Liquor on the malt.

(*e*) Hop out; second Copper, Wort; pumping in wort; first Copper not in use. (53 lbs. hops used).

(*f*) Hops and table beer out of the copper. Coppers not in use. Grains in part gone out of mash-tub. Under back not in use. The quantity of beer made not declared by brewer.

(*g*) The same as note (*f*).

(*h*) The first Round filled with strong beer, the second Round with Table beer. Coppers not in use. The quantity of strong and table beer declared by brewer.

(*i*) The first Round filled with strong beer, Table beer run into barrels. Coppers not in use.

(*k*) The first Round filled with strong beer. Coppers not in use.

(*l*) The strong beer run into barrels, and the brewing utensils are not in use.

(*m*) The same as (*a*).

The 25th section of the 7 & 8 Geo. IV. c. 53, is repealed by the 4 & 5 Will. IV. c. 51, and in lieu thereof it is enacted by the latter statute,

(7). *Of entries, &c.*

4 & 5 Will. 4, c. 51.

Excise traders shall pay their duties at such time and place and to such person as shall be appointed, or upon demand made by order of the commissioners, on pain of forfeiting double duty.

Sect. 11. "That every person carrying on any trade or business under or subject to any law or laws of Excise, shall pay and clear off the duty or duties in that behalf imposed by any act or acts of Parliament respectively, and charged upon or incurred by such person, at such time and place, and to such person respectively as shall for that purpose be specially directed by any act or acts of Parliament relating to such duties, or as shall be from time to time directed by the commissioners of Excise, whether payment of such duties shall have been or shall be secured by bond or otherwise, in pursuance of any act or acts of Parliament, or not; and if any such person shall not pay and clear off such duty or duties at such time and place and to such person respectively as aforesaid, or upon demand made, under order of the commissioners of Excise, by any general surveyor of Excise where the trade or business shall be carried on within the limits of the chief office of Excise, or elsewhere by the collector of Excise, in whose collection such trade or business shall be carried on, or the officer of Excise in charge for the time being of such collection, or by any officer of Excise authorized and directed by such collector or officer to make such demand, whether such demand shall be made personally of such person, or shall be left at his dwelling-house, or at the premises where such duty or duties shall have been charged, every such person shall forfeit and lose double the value of the duty or duties so neglected to be paid and cleared off as aforesaid."

7 & 8 Geo. 4, c. 53.

No person compelled to go further than next market town for making entries or payment of duties (*a*).

7 & 8 Geo. IV. c. 53, sect. 26. "Provided always, that no person who shall carry on trade or business in any such market town as aforesaid, or in any such other town as hereinbefore specified, shall be compelled to travel out of such market town or other town for the purpose of paying any duty of Excise, or of making any entry (other than the entry required to be made of any building, place, vessel, or utensil for the purpose of carrying on trade or business); and that no person who shall carry on trade or business out of any such market town, or other town as aforesaid, shall be compelled to travel to any other place than such market town, or other town as aforesaid, next to the place for or at which such duty shall have been charged, or such entry (other than as aforesaid) is required to be made for the purpose of paying such duty or making such entry."

Collectors may issue warrants to levy in Scotland or Ireland duties in danger of being lost.

Sect. 27. "That in all cases in Scotland or Ireland where any duties of Excise charged upon or payable by any person or persons shall be unpaid, and shall be in danger of being lost to his Majesty, unless immediate proceedings are taken for the recovery of such duty or duties, it shall be lawful for the collector of Excise, or other officer in charge of the collection within which such duty or duties shall have been charged or be payable, on affidavit being made before him of the facts, showing the danger such duty or duties are in of being lost, to issue a warrant under his hand against every or any person or persons upon whom such duty or duties shall have been charged, or by whom the same shall be payable, empowering any person or persons to levy such duty or duties in like manner as any penalty may be levied by any warrant issued under and by virtue of this act; and such warrant of such collector or other officer as aforesaid shall for that purpose have the same force and effect as a writ of fieri facias issued at the suit of his Majesty out of the Court of Exchequer; and such collector or other

(*a*) By the 4 Vict. c. 20, s. 1, no town is to be deemed a market town for the above purposes, other than such as were so at the time of the passing the 7 & 8 Geo. IV. c. 53, provided that it shall be lawful for the commissioners to appoint an Excise office, to be held and kept and duties of Excise to be collected and received, in any other town or place, as well within the limits of the chief officer of Excise, as elsewhere, if they shall see fit.

(7). *Of entries, &c.*

7 & 8 Geo 4, c. 53.

officer as aforesaid issuing any such warrant shall forthwith transmit the affidavit on which such warrant was issued, with his report of what had been done thereon, to the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively; and it shall thereupon be lawful for such commissioner or commissioners and assistant commissioners respectively to stay the proceedings, or to grant such other relief on such warrant as they shall think fit."

4 Vict. c. 20.

The 4 Vict. c. 20, s. 23, repeals the 7 & 8 Geo. IV. c. 53, s. 28, and in lieu thereof enacts by

All goods subject to duties of Excise, and all materials, machinery, vessels, and implements used in the manufacture, to be liable for all duties, arrears, and penalties incurred whilst in possession of trader.

Sect. 24, "That all goods and commodities, for or in respect of which any duty of Excise is or shall be by law imposed, and all materials and preparations from which any such goods are made, and all stills, backs, vats, coppers, cisterns, tables, presses, machines and machinery, vessels, utensils, implements, and articles for making or manufacturing or producing any such goods and commodities, or preparing any materials, or by which the trade or business in respect of which the duty is or shall be imposed shall have been or shall be carried on, in the custody or possession of the person carrying on such trade or business, or in the custody or possession of any factor, agent, or other person in trust for or for the use of the person carrying on such trade or business, shall be and remain subject and liable to, and the same are hereby made chargeable with, all the duties of Excise which, during the time of any such custody or possession, shall be or shall have been charged or become chargeable on or be in arrear or owing from or by the person carrying on such trade or business; and shall also be and remain subject and liable to all penalties and forfeitures which during any such custody or possession shall be or shall have been incurred by the person carrying on such trade or business, for any offence by such person committed against any act or acts relating to the revenue of Excise; and all such goods, materials, and preparations, stills, backs, vats, coppers, tables, presses, machines, machinery, vessels, utensils, and articles shall be and remain subject and liable to all such duties, penalties, and forfeitures, by whomsoever and by whatsoever title or conveyance the same may be claimed; and it shall be lawful to levy thereon such duties, penalties, and forfeitures, and for that purpose to seize, take, sell, remove, and dispose of the same as the goods and chattels of the debtors or offenders under any writ or writs of extent, execution, or other process or warrant for the recovery or enforcement of any such duties, penalties, and forfeitures:

Proviso, that where goods duly charged with duty have been sold and delivered in the fair and ordinary course of trade, the liability to cease.

Provided always, that where any goods or commodities subject to any duty of Excise shall have been taken account of and duly charged with duty by the proper officer of Excise, and shall, after having been so taken account of and charged with duty, be fairly and *bonâ fide*, and in the regular and ordinary course of trade, sold, disposed of, and delivered into the possession of the purchaser thereof, for a full and valuable consideration, before the teste or issuing of any process or warrant for the recovery of any duty or penalty, such goods and commodities in the possession of such fair and *bonâ fide* purchaser shall be discharged from such liability as aforesaid; but in all cases where any goods or commodities shall be seized in the custody or possession of any person, and shall be claimed to be discharged from such liability, as having been fairly and in the regular and ordinary course of trade purchased, proof of the fairness and *bona fides* of the purchase, and of the same having been in the regular and ordinary course of trade, and of the sale and delivery having been made before the teste or issuing of the process or warrant under which such goods or commodities shall be seized, shall lie on the claimer thereof."

7 & 8 Geo 4, c. 53. Officers authorized to administer oaths.

By the 7 & 8 Geo. IV. c. 53, sect. 29, "That in all cases where any oath is or shall by this act, or any other act or acts of Parliament relating to the revenue of Excise, be required and directed to be made or taken by any person or persons whomsoever, it shall be lawful for the commissioners or assistant commissioners, or any commissioner or assistant com-

missioner of Excise, or for the commissioners of appeal under this act, or the justices or any justice of the peace, or officers or any officer or other persons or person before whom such oath is required to be made or taken, and they and he respectively are and is hereby authorized to administer and receive such oath accordingly."

(7). *Of entries, &c.*

7 & 8 Geo 4, c. 53

Quaker's affirmation may be accepted in lieu of an oath.

Sect. 30. "That in every case in which an oath is by this act, or any other act or acts of Parliament relating to the revenue of Excise, required and directed to be made or taken, and in all proceedings for any misdemeanor, or for the recovery of any penalty incurred, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, if the person required to make or take such oath shall be and be known to be one of the people called quakers, then and in every such case the solemn affirmation or declaration of such quaker shall be administered and received as aforesaid, in lieu of such oath; any act or acts of Parliament to the contrary thereof in anywise notwithstanding."

Penalties on perjury and subornation of *perjury*.

Sect. 31. "That if any person who shall make or take any such oath or affirmation or declaration shall wilfully and knowingly swear or affirm or declare falsely to any matter or thing therein, every such person, being duly convicted thereof, shall incur and suffer the pains and penalties to which persons are or shall be liable for wilful and corrupt perjury; and if any person shall corruptly procure or suborn any other person to swear or affirm or declare falsely to any matter or thing in any such oath or affirmation or declaration, every person duly convicted of such procuring or suborning shall, for every such offence, incur and suffer such penalties, forfeitures, pains, and disabilities respectively, as persons are or shall be liable to on being convicted of subornation of perjury."

Goods fraudulently *removed* or concealed to be forfeited; also packages or conveyances used for removing same

Sect. 32. "That in case any goods or commodities for or in respect whereof any duty of Excise is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities, shall be *removed* or shall be *deposited* or *concealed* in any place, with *any intent to defraud* his Majesty of such duty, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited; and in every such case, and in every case where any goods or commodities shall be forfeited under this act, or any other act or acts of Parliament relating to the revenue of Excise, all and singular the casks, vessels, cases, or other packages whatsoever, containing or which shall have contained such goods or commodities respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other cattle, and all things used in the removal or for the deposit or concealment thereof respectively, shall be forfeited; and every person who shall *remove*, *deposit*, or *conceal*, or be concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any duty of Excise is or shall be imposed, with intent to defraud his Majesty of such duty, or any part thereof, shall forfeit and lose treble the value of all such goods and commodities, or the sum of one hundred pounds, at the election of the commissioners of Excise or Customs, or of the commissioner or commissioners and assistant commissioners of Excise or Customs in Scotland and Ireland respectively, or the person who shall inform or sue for the same."

Penalty, treble the value, or 100*l*.

The above section is altered and amended by the 4 & 5 Will. IV. c. 51, and the penalty in some respects materially extended, for the words "with any intent to defraud," &c. are omitted; the amended enactment of the latter act is as follows:—

4 & 5 Will 4, c. 51.

Goods fraudulently produced to obtain drawback forfeited with treble value, or 100*l*.

Sect. 12. "That all goods, which shall be removed or deposited or concealed, or which shall be produced to any officer of Excise or Customs, with intent fraudulently to obtain any drawback or allowance, granted by any act or acts relating to the revenue of Excise or Customs,

(7). *Of entries, &c.*

4 & 5 Will. 4. c. 51.

shall, with the casks, vessels, cases, or other packages containing the same, be forfeited; and every person who shall remove or deposit or conceal, or shall produce to any officer of Excise or Customs, any goods with intent fraudulently to obtain any drawback or allowance, granted by any act relating to the revenues of Excise or Customs, shall forfeit treble the value of such goods, or one hundred pounds, at the election of the commissioners of Excise or Customs, or the person who shall inform or sue for the same."

Goods condemned for being adulterated or mixed with any prohibited ingredients to be destroyed.

Sect. 13. "That all goods and commodities which shall be seized and condemned for or by reason of the same being adulterated or mixed with any unlawful or prohibited ingredients shall, after the condemnation thereof, be burned or otherwise effectually destroyed, and shall not be exposed to sale; and it shall be lawful in every such case for the commissioners of Excise, under the directions of the Lord High Treasurer, or commissioners of the Treasury, to distribute to and amongst the officers who shall have seized such goods or commodities a sum of money equal to the value of the said goods or commodities, or such greater or lesser reward as by the said Lord High Treasurer or commissioners of the Treasury shall be deemed expedient."

Persons found employed in unentered Excise manufactories liable to fine and imprisonment.

Penalty, 30*l.*

Excise officer may apprehend offender; Proceedings to conviction, &c.

On non payment of penalty, three months' imprisonment.

Second offence, penalty, 60*l.*

By the 7 & 8 Geo. IV. c. 53, s. 33, "That when any officer of Excise shall at any time find in any private or unentered place manufacturing, or in the course of manufacturing, any goods or commodities for or in respect whereof any duty of Excise is or shall be imposed, or any materials or preparations for manufacturing any such goods or commodities, and shall at the same time discover in or about such private or unentered place any person knowingly aiding, assisting, or in anywise concerned in the manufacturing of such goods or commodities, every person so discovered shall forfeit and lose the sum of 30*l.*, over and above all other penalties to which the proprietor of the same, or the person in whose custody or possession the same shall be found, or by whom the manufacturing of such goods or commodities may be carrying on, is or may be subject and liable; and it shall be lawful for any officer of Excise, and all persons acting in his aid and assistance, to arrest and detain every person so discovered, and to convey him or her before one or more justice or justices of the peace for the county, shire, division, city, town, or place wherein such person shall be so discovered as aforesaid; and it shall be lawful to and for such justice or justices of the peace, on confession of the party, or by proof on the oath of one or more credible witness or witnesses made of such offence, to convict every such person so discovered as aforesaid; and every person so convicted shall, immediately on such conviction, pay the said sum of 30*l.* into the hands of the officer who shall have conveyed such offender before such justice or justices of the peace, to be paid to the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland respectively, or to such person or persons as they may respectively appoint, to be applied in such manner as other Excise penalties are by this act directed to be applied; and on any such offender refusing or neglecting to pay the said sum of 30*l.*, the justice or justices so convicting as aforesaid shall and may, by warrant or warrants under his or their hand or hands, commit the said offender to the house of correction or other prison for the said county, shire, division, city, town, or place respectively, there to remain and be kept to hard labour for the space of three calendar months, to be reckoned from the day of such conviction, and the person so convicted and committed shall not under any pretence, or by reason of any authority or order other than as hereinafter mentioned, be discharged, until he or she shall have paid the said sum of 30*l.*, or until the expiration of the said three months; and in case any person so convicted shall be again discovered in or about any private or unentered place or places, manufacturing or in the course of manufacturing any goods or commodities for or in respect whereof any duty of Excise is or shall be imposed, or

(7). *Of Entries, &c.*

7 & 8 Geo. 4, c. 53

any materials or preparations for manufacturing such goods or commodities, or aiding or assisting or in anywise concerned in manufacturing such goods or commodities, such person so again offending shall, upon the like conviction, forfeit and pay for such further offence the sum of 60*l.*, and shall be committed to the house of correction or other prison in manner aforesaid, there to remain as aforesaid for and during the term of six months, or until the said sum of 60*l.* shall be paid. Provided always, that in any such case of imprisonment it shall be lawful for the commissioners of Excise, or for the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, to order any person so imprisoned to be discharged at any time before the term of his or her imprisonment shall have expired."

Upon an officer making oath of suspicion, two commissioners, or one justice, may grant warrant to enter (if in the night, in presence of constable) and seize forfeited goods lodged or concealed in any place (*a*)

Sect. 34. "That if any officer of Excise shall have cause to suspect that any goods or commodities forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, are deposited or concealed in any place, then and in every such case, if such place shall be within the limits of the chief office of Excise in London, upon oath being made by such officer before the commissioners of Excise, or any two or more of them, or if such commissioner shall not be publicly sitting for the dispatch of business, or such place or places shall be in any other part of the United Kingdom out of the limits of the said chief office, then upon such oath being made before one or more justice or justices of the peace for the county, shire, division, city, town, or place where such officer shall suspect such goods or commodities to be deposited or concealed, setting forth the ground of such suspicion, it shall be lawful to and for the said commissioners, or any two or more of them, or the justice or justices of the peace respectively (as the case may be), before whom such oath shall be made, if he or they shall judge it reasonable, by special warrant or warrants under his or their hands respectively, to authorize and empower such officer, by day or by night (but if between the hours of eleven of the clock at night and five in the morning, then in the presence of a constable or other lawful officer of the peace), to enter into every such place where any such goods or commodities shall be suspected to be deposited or concealed, and to seize and carry away the same; and it shall be lawful for any officer to whom any such warrant shall be given or granted, and he is hereby authorized, in case of resistance, to break open any door, and to force and remove any other impediment or obstruction to such entry, search, or seizure, and removal as aforesaid."

4 & 5 Will 4, c 51.

Power to reward officers detecting private manufactories.

By the 4 & 5 Will. IV. c. 51, s. 14. "That where any person shall be arrested and detained by any officer or officers of Excise for being found in any private or unentered place, knowingly aiding, or in anywise concerned in the manufacturing of any goods or commodities for or in respect of which any duties of Excise are or shall be imposed, and such person shall be convicted in the penalty of thirty pounds or sixty pounds imposed for such offence, but shall not pay the same, it shall be lawful for the commissioners of Excise, with the consent and approbation of the commissioners of his Majesty's Treasury, if they shall see fit, to cause a reward not exceeding a moiety of the penalty so imposed to be paid to the officer or officers by whom and at whose instance such person shall have been arrested and detained and convicted; and in case any officer or officers of Excise shall seize any such goods or commodities, or any materials for the manufacture thereof, in any private or unentered place, but shall not at the same time arrest or detain any such person, or if any person arrested or detained shall not be convicted,

(*a*) As to the non-liability of the officer who makes an ineffectual search, &c. see *Bostock* v. *Saunders*, 2 *Bla. R.* 912; *Bruce* v. *Rawlins*, 3 *Wils.* 61; *Cooper* v. *Booth*, 3 *Esp. R.* 135, 4 *Dougl.* 339, cited in *Johnstone* v. *Sutton*, in error, (as *Booth* v. *Cooper*), 1 *T. R.* 535; *Scott* v. *Shearman*, 2 *Bla. R.* 977; *High. on Excise*, 220.

(7). *Of Entries, &c.*

it shall be lawful for the said commissioners of Excise, with the consent and approbation aforesaid, if they shall see fit, to cause a reward not exceeding five pounds to be paid to such officer or officers."

7 & 8 Geo. 4, c. 53. Justices, constables, &c. required to assist revenue officers.

By the 7 & 8 Geo. IV. c. 53, sect. 35, "That all justices of the peace, mayors, bailiffs, constables, and all his Majesty's officers, ministers, and subjects, serving under his Majesty, by commission, warrant, or otherwise, shall be aiding and assisting, and they are hereby respectively required to be aiding and assisting to every officer of Excise in the due execution of any act or thing required and enjoined by this act, or by any other act or acts of Parliament relating to the revenue of Excise, to be done; and all such persons who shall be so aiding and assisting unto any such officer of Excise as aforesaid are and shall be defended and saved harmless by virtue of this act; and if any such person shall be sued or prosecuted for or on account of any act, matter, or thing by such person done in giving such aid and assistance, every such person shall and may plead the general issue, and give this act and the special matter in evidence in defence in such behalf."

4 & 5 Will 4, c 51.

The 36th section of the 7 & 8 Geo. IV. c. 53, is repealed by the 4 & 5 Will. IV. c. 51, s. 15, and in lieu of such section, enacts by,

Constable or peace officer not assisting officer of Excise when required to forfeit 20*l.*

Sect 16. "That if upon notice given, or request made by any officer of Excise to any constable, headborough, or other ministerial officer of the peace, to go with him as such officer of Excise, and to aid and assist him as such officer of Excise in the due execution of any act or thing required or enjoined by any act or acts relating to the revenue of Excise or Customs to be done or prevented from being done, or which it shall be lawful for any officer of Excise to do or to prevent from being done, such constable, headborough, or officer of the peace shall not go with such officer of Excise, or shall not aid or assist him as aforesaid to the utmost of his power, such constable, headborough, or other officer of the peace so offending, shall forfeit twenty pounds."

7 & 8 Geo. 4, c 53 Constables may continue assistance into neighbouring districts

By the 7 & 8 Geo. IV. c. 53, sect. 37. "That it shall be lawful for every constable, headborough, or other ministerial officer of the peace, who shall have begun to assist any officer or officers of Excise in the execution of his or their duty in any place where such constable, headborough, or ministerial officer of the peace shall have jurisdiction by law, and such constable, headborough, and ministerial officer of the peace is hereby respectively authorized and required to continue such his assistance into and in any other place, and shall be deemed a constable, headborough, or ministerial officer of the peace, and have jurisdiction accordingly, in such last-mentioned place, for the purpose of continuing such assistance."

Officers of Excise and Customs to have similar powers of seizure, &c. of goods forfeited under laws of Excise or Customs.

Sect. 38. "That every officer of the Customs shall have, use, and exercise all such and the like powers and authorities for the arrest and prosecution of any person, or for the search, examination, seizure, detention, removal, and prosecution of any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any foreign or imported goods or commodities whatsoever, or any British spirits, forfeited under this act, or any other act or acts of Parliament relating to the revenue of Excise, as are, shall be granted, or shall or may be used or exercised in that behalf by any officer of Excise; and that every officer of Excise shall have, use, and exercise all such and the like powers and authorities for the arrest and prosecution of any person, or for the search, examination, seizure, detention, removal, and prosecution of any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any foreign or imported goods or commodities whatsoever, forfeited under any act or acts of Parliament relating to the revenue of the Customs, as are or shall be granted or shall or may be used or exercised in that behalf by any officer of the Customs; any thing in this act or in any other act or acts of Parliament to the contrary thereof notwithstanding."

Persons obstructing officers, &c. in making seizures, or rescuing the same,

Sect. 39. "That if any person shall molest, obstruct, or hinder any officer of Excise, or any person employed in the revenue of Excise, or acting in aid and assistance of such officer or person so employed as afore-

(7). *Of Entries, &c.*

7 & 8 Geo. 4, c. 53. or destroying packages, to forfeit 200*l.* (*a*).

said, in the search, examination, seizure, detention, or removal of any goods, or commodities, or any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any other thing whatsoever forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenues of Excise or Customs, or in the due execution of his office or duty respectively in that behalf, or shall after any such officer or person so employed, or person acting in such aid and assistance as aforesaid, shall have made any such seizure as aforesaid, rescue or cause the same to be rescued, or shall attempt or endeavour so to do, or shall, whilst such officer or person so employed, or person acting in such aid and assistance as aforesaid, is or are searching for, examining, detaining, seizing, or removing any such goods or commodities, vessel, boat, cart, carriage, or other conveyance, or any such horse, cattle, or other thing whatsoever as aforesaid, break or otherwise damage or destroy the same, or any of them, or any part thereof, or any cask, vessel, case, or other package whatsoever, containing any such goods or commodities, every person so offending shall for every such offence forfeit and lose the sum of two hundred pounds."

Officers, &c. violently resisted may oppose force to force; and on being prosecuted shall be admitted to bail; and may plead general issue.

Sect. 40. "That if any person armed with any offensive weapon (*b*) whatsoever shall with force or violence assault or resist any officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid or assistance of such officer or person so employed, who in the execution of his office or duty shall search for, take, or seize, or shall endeavour or offer to search for, take, or seize any goods or commodities forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise or Customs, or who shall search for, take, or seize, or shall endeavour or offer to search for, take, or seize any vessel, boat, cart, carriage, or other conveyance, or any horse, cattle, or other thing used in the removal of any such goods or commodities, or who shall arrest or endeavour or offer to arrest any person carrying, removing, or concealing the same, or employed or concerned therein, and liable to such arrest, then and in every such case it shall be lawful for every such officer and person so employed, and person acting in such aid and assistance as aforesaid, who shall be so assaulted or resisted, to oppose force to force, and by the same means and methods by which he is so assaulted or resisted, or by any other means or methods, to oppose such force and violence, and to execute his office or duty; and if any person so assaulting or resisting such officer as aforesaid, or any person so employed, or any person acting in such aid and assistance as aforesaid, shall in so doing be wounded, maimed, or killed, and the said officer or person so employed, or person acting in such aid and assistance as aforesaid, shall be sued or prosecuted for any such wounding, maiming, or killing, it shall be lawful for every such officer or person so employed, or person acting in such aid and assistance, to plead the general issue, and give this act and the special matter in evidence in his defence; and it shall be lawful for any justice or justices of the peace, or other magistrate or magistrates before whom any such officer or person so employed, or person acting in such aid and assistance as aforesaid, shall be brought, for or on account of any such wounding, maiming, or killing as aforesaid, and every such justice of the peace and magistrate is hereby directed and required to admit to bail every such officer, and every person so employed, and every person acting in such aid and assistance as aforesaid; any law, usage, or custom to the contrary thereof in anywise notwithstanding."

(*a*) 6 Geo. 1, c. 21, s. 7; 9 Geo. II. c. 35, s. 26; 42 Geo. III c. 38, s. 35; 43 Geo. III. c. 81, s. 16. By several acts, relating to particular articles of Excise, further penalties were imposed; but the 9 Geo. II. c. 35, s. 26, was repealed by 6 Geo. IV. c. 105.

(*b*) As to what are "offensive weapons," see *R.* v. *Cosans*, 1 Leach, 342, 343, n. (*a*), and the cases cited in Archbold's Criminal Pleading, by Jervis, p. 587.

(7). *Of Entries, &c.*

7 & 8 Geo. 4, c. 53.

Persons, against whom indictment or informations for resistance shall have been found or filed, to give security; or in default to be committed.

Sect. 41. "That whenever any person shall be charged with violently assaulting or resisting as aforesaid any officer of Excise, or person so employed, or person acting in such aid and assistance as aforesaid, in the due execution of his office or duty, and such charge shall, by affidavit or by certificate of an indictment or information being filed against such person for any such offence, be made to appear to any judge of any of his Majesty's superior courts of record in which such indictment or information shall be found or filed, or into which the same shall have been removed, it shall be lawful for such judge to issue his warrant in writing, under his hand and seal, and thereby to cause any person being a defendant in such indictment or information to be apprehended and brought before him or some other judge of such court, or before some one of his Majesty's justices of the peace, in order that such defendant may be bound to the King's Majesty, with two sufficient persons as sureties, in such sum (the same not being in any case less than 100*l.*) as in the said warrant shall be expressed, with condition to appear in such court at the time mentioned in such warrant, to answer his said Majesty in the said court concerning any articles on behalf of his Majesty to be there objected against him for any such offence as aforesaid; and in case any such defendant shall neglect or refuse to become bound as aforesaid, it shall be lawful for such judge or justice of the peace respectively, and they are hereby respectively directed and required to commit such defendant to the common gaol of the county, shire, division, city, town, or place where the offence shall have been committed, or where such defendant shall have been apprehended, until such defendant shall become bound as aforesaid, or shall be discharged by order of such court in term time, or by one of the judges of such court in vacation; and the recognizance to be taken thereupon shall be returned and filed in such court, and shall continue in force until such defendant shall have been acquitted of such offence, or, in case of conviction, shall have received judgment for the same, unless sooner ordered by such court to be discharged."

If an offender be in prison for want of bail, a copy of the indictment or information may be delivered to the gaoler with a notice of trial, and proceedings had thereon.

Sect. 42. "That where any such defendant is or shall be committed to and detained in gaol for want of bail, it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to the gaoler, keeper, or turnkey of the gaol wherein such defendant is or shall be so detained, with a notice thereon indorsed, that unless such defendant shall, within such space of time as shall be for that purpose limited and fixed by the court in which such indictment or information shall be found or filed, or into which the same shall have been removed, cause an appearance and also a plea or demurrer to be entered in the said court to such indictment or information, and* appearance and the plea of not guilty will be entered thereto in the name of such defendant; and the prosecutor of such indictment or information shall also be at liberty to indorse on the copy of such indictment or information so delivered a further notice, that the issue to be joined on such indictment or information will be tried in the next term, or at the next assizes, or at the next general gaol delivery or court of justiciary to be holden in or for the county, shire, division, city, town, or place in which the offence shall be alleged to have been committed, or the venue laid in such indictment or information; and in case any defendant so committed or detained as aforesaid shall neglect to cause an appearance and also a plea or demurrer to be entered in such court to such indictment or information, within the space of time so to be limited and fixed by such notice as aforesaid, then, upon an affidavit being made and filed in such court, of the delivery of a copy of such indictment or information, with such notice as hereinbefore first mentioned indorsed thereon as aforesaid, to such gaoler, keeper, or turnkey, as the case may be, (which affidavit may be made before any judge or commissioner of the said court authorized to take affidavits in the said court), it shall be lawful for the prosecutor of such indictment or information to cause an appearance and the plea of not guilty to such indictment or

information to be entered in the said court for such defendant, and such proceedings shall be had thereupon as if the defendant in such indictment or information had appeared and pleaded not guilty according to the usual course of such court; and if upon the trial of such indictment or information the defendant so committed and detained as aforesaid shall be acquitted of all the offences therein charged upon such defendant, it shall be lawful for the judge before whom such trial shall be had, although he may not be one of the judges of the court in which such indictment or information shall be found or filed, or into which the same shall have been removed, to order that such defendant shall be forthwith discharged out of custody as to such commitment."

(7). *Of Entries, &c.*

7 & 8 Geo. 4, c. 53. Defendant, if acquitted, to be discharged.

By the 4 & 5 Will. IV. c. 51. s. 17. "That where any defendant shall be arrested and imprisoned under any writ of attachment issued out of his Majesty's court of Exchequer at Westminster, Edinburgh, or Dublin, for not entering an appearance to any proceedings commenced against him for the recovery of any duties of Excise, or of any penalty incurred under any act relating to the revenue of Excise, and such defendant shall neglect or refuse to enter or cause to be entered an appearance on his behalf by the time when a rule to plead might, according to the course and practice of the court, have been given if such defendant had caused an appearance to be entered in proper time, it shall be lawful for the solicitor of Excise, on behalf of the attorney-general, to cause a copy of the information, and also a rule to plead, to be served on such defendant by the same being delivered to the gaoler, keeper, or turnkey of the prison in which such defendant shall be confined, together with a notice setting forth, that unless such defendant shall appear and plead on or before the expiration of the rule to plead, which it shall be lawful for him to do without being required to take a copy of such information, judgment by default will be entered against him; and in case such defendant shall neglect to appear and plead at the expiration of the said rule, it shall be further lawful for the solicitor of Excise, on behalf of the attorney-general, to cause an appearance to be entered for such defendant, and to enter up judgment against him as for want of a plea, and thereupon to issue process of execution and proceed to charge such defendant in execution."

4 & 5 Will. 4, c. 51. Where a defendant arrested under an attachment shall refuse to enter an appearance he may be served with a copy of the information and a rule to plead, and in default of appearing and pleading, judgment to be entered up against him.

By the 7 & 8 Geo. IV. c. 53, sect. 43. "For the better and more impartial trial of any indictment or information which shall be found, commenced, or prosecuted for any such violent assault or resistance as aforesaid, be it enacted, that every such offence shall and may be inquired of, examined, tried and determined in any county in England, if such offence shall have been committed in England, or in any of the islands thereof, or in any county in Scotland, if the same shall have been committed in Scotland or in any of the islands thereof, or in any county in Ireland, if the same shall have been committed in Ireland or in any of the islands thereof, in such manner and form as if the same offence had been committed in such county respectively: and that whenever any person shall be convicted of any such violent assault or resistance as aforesaid, it shall be lawful for the court before which any such offender shall be convicted, or which by law is authorized to pass sentence upon any such offender, to award and order (if such court shall think fit) sentence of imprisonment, with hard labour, for any term not exceeding the term of three years, either in addition to or in lieu of any other punishment or penalty which may by law be inflicted or imposed upon any such offender; and every such offender shall thereupon suffer such sentence in such place, and for such term as aforesaid, as such court shall think fit to direct."

7 & 8 Geo. 4, c. 53. *Indictments or informations for assaulting officers* may be tried in any county, and offenders sentenced to hard labour

Sect. 64. "That all goods, commodities, and chattels whatsoever forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, shall and may be seized by any officer or officers of Excise, or person or persons employed in the revenue of Excise, or person or persons acting in the aid and assistance of any

Goods forfeited may be seized by any officer of Excise.

(7). *Of Entries, &c.*

7 & 8 Geo 4, c 53.

Merits alone to be attended to at the trial.

such officer or person so employed as aforesaid; and that on all trials of seizures whatsoever, in any of the courts of Exchequer or elsewhere, the seizure, together with the form and manner of making the same, shall be taken to have been as set forth in the information, without any evidence thereof; and it shall be lawful for all judges and other judicial persons before whom any such seizure shall be brought to trial or hearing, and having respectively jurisdiction in that behalf, and they are hereby respectively authorized and required to proceed to trial on the merits of the cause, without inquiring into the fact, form, or manner of making the seizure."

Notice of seizure.

Sect. 107. "That all officers of the Customs who shall make any seizure under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, of any exciseable goods or commodities, shall forthwith give notice of such seizure at the next office of Excise, or to the supervisor or other officer of Excise of the district where such seizure shall have been made; and such supervisor or other officer of Excise shall, on such notice, take a particular account of the species and quantities of all such goods and commodities so seized respectively; and the same or any part thereof shall not afterwards be removed without a permit (where a permit is, for the removal of goods or commodities of a similar quantity, sort, or kind, required under any act or acts of Parliament relating to the revenue of Excise), signed by the proper officer of Excise of the place or district from whence the same shall be intended to be removed, on pain of forfeiture thereof for such removal."

Seizures by police or peace officers to be lodged in office of Excise.

Sect. 108. "That all goods or commodities whatsoever which are or shall be prohibited, or which are or shall be subject to any duty or duties of Excise, and which shall be stopped, detained, or taken by any police officer or peace officer, or any other person, under or by virtue of any act or acts of Parliament, or under or by virtue of any other authority whatsoever, shall be conveyed, and the same is and are hereby directed and required to be forthwith conveyed to and deposited and lodged in the chief office of Excise, if the same shall have been stopped, detained, or taken, within the limits of the chief office, or in the nearest office of Excise if in any other part of the United Kingdom, in order that all such goods or commodities as aforesaid, and the person or persons in whose custody or possession the same were found, may be prosecuted or proceeded against as the nature of the case shall or may require; any thing in any act or acts of Parliament to the contrary thereof notwithstanding."

If stopped on suspicion of felony, to be lodged in police office, and notice given to proper officer of Excise, who may examine them

Sect. 109. "Provided always, that in case any such goods or commodities as aforesaid shall be stopped, detained, or taken by any police officer or peace officer, or any other person, on suspicion of the same having been feloniously stolen or taken or received, it shall be lawful to and for such police officer or peace officer, or other person so stopping, detaining, or taking the same, to convey to, deposit, and lodge forthwith all such goods and commodities as aforesaid in the office of the police office nearest to the place where the same shall have been so stopped, detained, or taken as aforesaid, or any other convenient place directed by the justice or justices of the peace before whom the same shall be carried, there to remain in order to be produced at the trial of any person or persons who shall be charged with feloniously stealing, taking, or receiving the same; and every such police officer or peace officer, or other person who shall so stop, detain, or take any such goods or commodities as aforesaid, after he shall have stopped, detained, or taken the same as aforesaid, shall forthwith give notice thereof in writing at the chief office of Excise, if the same shall have been stopped, detained, or taken within the limits thereof; and if the same shall have been stopped, detained, or taken in any other part of the United Kingdom, then at the office of Excise nearest to the place where the same shall have been so stopped, detained, or taken; and any officer of Excise shall thereupon be permitted to examine and take account of the same."

(7). *Of Entries, &c.*

Sect. 110. "That when and so soon as any person or persons charged with feloniously stealing, taking, or receiving any such goods or commodities as aforesaid shall have been tried for such offence, all such goods and commodities respectively as aforesaid shall immediately be conveyed to and deposited in the chief office of Excise, or other office of Excise as aforesaid, in order that prosecution or proceedings may be had for the condemnation of such goods or commodities for such cause or causes of forfeiture as the same shall be liable to, or that the same may be restored upon payment of such duty or duties as may be due in respect thereof, or upon such conditions as the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, shall think fit, to such person or persons as shall be proved to be the legal proprietor or proprietors thereof respectively, or for the purpose of being otherwise dealt with according to law."

7 & 8 Geo. 4, c. 53. After trial, goods to be immediately deposited in Excise office, to be dealt with according to law.

Sect. 111. "That in case any such goods or commodities which shall be so stopped, detained, or taken, shall not be conveyed to and deposited in the chief office of Excise, or other office of Excise, in the manner by this act directed, all such goods or commodities which shall not be so conveyed to and actually deposited in the chief office of Excise, or other office of Excise as aforesaid, shall be forfeited; and the person or persons in whose care, custody, or possession the same shall be, and who shall neglect or refuse so to convey and deposit the same as aforesaid, shall forfeit and lose the sum of twenty pounds."

Goods not so deposited shall be forfeited.

Parties making default to forfeit 20*l.*

Some manufacturers and traders are required to keep just scales and weights, and assist the officer in weighing, under penalties for neglect as with respect to glass manufactures. 19 Geo. II. c. 12, s. 14; 10 Geo. III. c. 44, s. 15; 28 Geo. III. c. 37; 26 Geo. III. c. 77, s. 8.

Scales, weights, &c.

(8). *Of claiming goods seized.*

(8). Of Claiming Goods seized.

By 7 & 8 Geo. IV. c. 53, s. 62. "That no claim shall be entered in any of his Majesty's Courts of Exchequer in England, Scotland, or Ireland, to any goods, commodities, or chattels whatsoever, seized as forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise or Customs, which are returned into such court, unless such claim shall be, within the time limited by the practice of the said court, entered in the real name or names of the proprietor or proprietors of the same, describing the place of residence and the business or profession of such person or persons; and if such person or persons shall reside in London, Edinburgh, or Dublin, or within ten miles thereof respectively, oath shall be made by every such person before one of the barons of the said Courts of Exchequer respectively, that the goods, commodities, or chattels respectively so claimed was or were really and truly the *bonâ fide* property of such person or persons at the time of such seizure; but if any such person shall not reside in London, Edinburgh, Dublin, or within ten miles thereof respectively, then and in such case oath shall be made in like manner by such person, or by the agent or attorney or solicitor by whom such claim shall be entered, that he has full and legal authority and directions from such proprietor to enter such claim, and that to the best of his knowledge and belief such goods, commodities, or chattels respectively were at the time of the seizure thereof really and truly the *bonâ fide* property of the person or persons in whose name or names such claim is so entered, which oath shall be indorsed and certified on the back of the indenture of appraisement upon which such claim shall be entered; and on failure thereof, the goods, commodities, or chattels respectively shall be condemned, and judgment shall be entered thereon by default, in the same manner as if no claim had been entered thereto; and every person who shall be convicted of making or taking a false oath to any of the facts hereinbefore directed or required to be sworn,

7 & 8 Geo. 4, c. 53. No claim to be entered in Exchequer as to goods seized, unless in real names of proprietors.

(8). *Of claiming goods seized.*

7 & 8 Geo. 4, c. 53. Claimants shall be bound with two sureties in a penalty of 100*l.* to pay costs of claim; and in default thereof the goods, &c. shall be condemned.

shall be deemed guilty of perjury, and shall be liable to all the pains and penalties to which persons are liable for wilful and corrupt perjury."

Sect. 63. "That upon the entry of any such claim to any goods, commodities, or chattels whatsoever, seized as forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise or Customs, which are returned for condemnation as aforesaid, the person or persons who shall enter any claim as proprietor or proprietors thereof respectively, and who shall reside within the jurisdiction of the court in which such claim shall be entered, shall be bound, with two other sufficient persons as sureties, in the penalty of 100*l.*, to answer and pay the costs occasioned by such claim; and where any such proprietor or proprietors shall not reside within such jurisdiction, the agent, attorney, or solicitor by whose directions such claim shall be entered shall in like manner be bound, with two other sufficient persons as sureties, in the like penalty, to answer and pay the costs occasioned by such claim; and in default of giving such security within the time limited by the practice of the court in which such claim shall be entered, all such goods, commodities, or chattels respectively shall be adjudged to be forfeited, and shall be condemned as unclaimed; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

4 Vict. c. 20. Seizures under 15*l.* value, unless claimed in one month, to be condemned.

By the 4 Vict. c. 20, s. 32. "That all goods, commodities, chattels, and things, not exceeding fifteen pounds in value, which shall be seized as forfeited under the provisions of any act or acts relating to the revenue of Excise, and which shall not within the space of one month after the seizure thereof be claimed by the owner, by application in writing either to the commissioners or the collector or supervisor of Excise, or to the officer seizing or in whose custody the goods, commodities, chattels, or things seized shall be, shall be absolutely forfeited, as fully and effectually as if the same had been condemned by judgment of condemnation of her Majesty's Court of Exchequer; and in all cases in which any such goods, commodities, chattels, or things seized shall be claimed by any person within such time as aforesaid, such proceedings shall be had for the condemnation thereof as in the case of other goods, commodities, or chattels or things seized as forfeited under any law or laws of Excise: Provided always, that nothing herein contained shall extend or be construed to extend to restrict or affect the forfeiture of any goods, commodities, chattels, or things seized under the provisions of an act passed in the second year of the reign of his late Majesty King William the Fourth, to consolidate and amend the laws for suppressing the illicit making of malt and distillation of spirits in Ireland."

(9). *Of proceedings for condemnation, &c.*

7 & 8 Geo. 4, c. 53. Proceedings necessary for the condemnation of seizures, where the owners of the goods do not appear to claim (*a*).

(9). Proceedings for Condemnation of Seizures, Warrants, &c.

By the 7 & 8 Geo. IV. c. 53, s. 93. "That in all cases where any seizure shall be made of any goods, commodities, or chattels, under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, and no person shall appear to claim the goods, commodities, or chattels so seized, then, and in every such case, if such seizure shall have been made within the limits of the chief office of Excise, it shall be lawful for any officer of Excise who shall have made such seizure, after the expiration of fourteen days next after the day on which such seizure shall have been made (*a*), to cause notice in writing, signed by the solicitor of Excise for the summary jurisdiction,

(*a*) The court will set aside a condemnation of goods seized, passed for want of claim, in order that the defendant may enter a claim under circumstances where the party applying offers payment of the costs of the condemnation, on the terms of his paying also the costs of the application; and they refused in such a case to order the defendant to find bail as one of the terms of making absolute a rule to show cause. (*The Attorney General* v. *Cullem*, 8 *Price*, 668; and 1 *Price*, 48. And see the 4 Vict. c. 20, s. 32, as above).

(9). *Of proceedings for condemnation, &c.*

7 & 8 Geo. 4, c. 53.

to be affixed on some conspicuous part of the outside of the chief office of Excise, signifying the day when the commissioners of Excise, or any three or more of them, will proceed to hear and adjudge the matter of such seizure; and if any such seizure shall have been made as aforesaid in any part of the United Kingdom out of the limits of the chief office of Excise, it shall be lawful for any officer of Excise who shall have made such seizure to cause a notice, issued by any justice or justices of the peace within whose jurisdiction any such seizure shall have been made, and before whom any information shall have been exhibited for the condemnation thereof, to be affixed on some conspicuous part of the outside of the office of Excise, next to the place where such seizure shall have been made, during the market day next after the expiration of six days from the day on which such seizure was made, or during any other subsequent market day, in which notice there shall be specified the day (the same being any day after the termination of eight days from the date of such notice) and the place, when and where the justices of the peace will proceed to the hearing and adjudging of the matter of any such seizure; and it shall be lawful for the said commissioners of Excise and justices of the peace respectively, within their respective jurisdictions, and they are hereby respectively authorized and required to proceed, on the day and at the place mentioned in such notice, to examine into the cause of any such seizure, and to give judgment accordingly; and such judgment shall be as good, valid, and effectual in law, as if the respective proprietor or proprietors of the goods, commodities, or chattels seized respectively, had been respectively summoned in manner hereinbefore in this act directed."

Proceedings on seizure of horses, cattle, or goods of a perishable nature.

Sect. 94. "Provided always, that where any horses or other cattle, or any goods of a perishable nature, shall be seized by any officer or officers of Excise as forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise or Customs, it shall be lawful for the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, and they are hereby respectively authorized to order any such seizure as aforesaid to be liberated and delivered up to the claimant or claimants thereof, upon such claimant or claimants entering into a bond to his Majesty, in the penalty of double the value of the horses or other cattle or goods respectively so liberated and delivered up as aforesaid, with a condition thereunder written, that such bond shall be void upon payment of the appraised value of such horses or other cattle, or of such goods respectively, as aforesaid, on the condemnation thereof as forfeited (*a*); and if no claimant of any such horses or other cattle, or of such goods respectively, shall appear, or if appearing, such claimant shall refuse or neglect to enter into such bond as aforesaid, it shall be lawful for the commissioners of Excise, and commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, and they are hereby respectively authorized, at any time after the expiration of fourteen days from the making of any such seizure, to order and direct that all such horses or other cattle, or all such goods respectively, as aforesaid, shall be sold at public auction, notwithstanding the condemnation thereof shall not at that time have taken place: provided always, that if any such horses or other cattle, or if any such goods as aforesaid, shall be afterwards ordered to be restored without any proceeding being instituted for the condemnation thereof, or if instituted before the same shall have been condemned, or if upon the hearing or trial for the condemnation of such horses or other cattle, or of such goods as aforesaid, the decision or verdict thereupon shall be in favour of the claimant or claimants thereof, the appraised value of such horses or other cattle, or of such goods as afore-

(*a*) The 12 Geo. I. c. 28, s. 16, gave power to a justice to swear a person to value.

(9). *Of proceedings for condemnation, &c.*

7 & 8 Geo. 4, c. 53.

said, or the proceeds of the sale thereof respectively, at the election of such claimant or claimants, shall, on demand thereof, be paid to such claimant or claimants, by the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, together with such further reasonable sum, by way of compensation for the loss sustained by reason of the seizure, detention, and sale of such horses or other cattle, or of such goods as aforesaid, as the commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, shall in their discretion think fit; and if the proprietor or proprietors, or claimant or claimants, of any such horses or other cattle, or of any such goods as aforesaid, shall accept such appraised value, or proceeds of sale, together with such further sum as aforesaid, no such proprietor or claimant shall have or be entitled to maintain any action or suit for any recompence or damage on account of the seizure, detention, or sale of any such horses or other cattle, or of any such goods as aforesaid; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

Sheriff to grant warrant on writ of capias indorsed by one of the solicitors of Excise (a).

Sect. 95. "That where any writ of capias, or other writ or process authorizing or directing the arrest of any person or persons, for or on account of any penalty or penalties by such person or persons incurred under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise or Customs, or for or on account of any duty of Excise, or any other matter or thing relating to the revenue of Excise, shall issue out of the Court of Exchequer in England, Scotland, or Ireland, directed to any sheriff, sheriff depute, mayor, bailiff, or other person having the execution of any such writ of capias, or other writ or process as aforesaid, in any county, shire, division, city, town, or place in any part of the United Kingdom, every such sheriff, sheriff depute, mayor, bailiff, and other person, and their and every of their under sheriffs, deputies, and other persons acting for them in any of the said offices respectively, shall, and they are hereby respectively enjoined and required, upon the request or application of any of the solicitors of Excise in England, Scotland, or Ireland (such request to be in writing, and indorsed upon the back of such writ of capias or other writ or process as aforesaid, and signed by such solicitor with his name, and addition of solicitor of Excise), to grant a special warrant or warrants to such person or persons as shall be specified in such indorsement by such solicitor, for the apprehension of the person or persons named in such writ of capias, or other writ or process as aforesaid; and in default thereof every such sheriff, sheriff depute, mayor, bailiff, or other person, having execution in any such writ of capias, or other writ or process as aforesaid, and every under sheriff, deputy, or other person acting for them in the said offices respectively, by or through whom the said default shall have been made, shall be subject and liable to such process of contempt, fine, amerciament, penalty, and forfeiture, as they or any of them are now by any law, custom, or usage liable to, in case of refusing or neglecting to execute the like writ of capias, or other writ or process, in the common and usual method of proceeding thereon."

Sheriffs indemnified where the warrant is granted at request of the solicitor of Excise.

Sect. 96. "That all and every such sheriff, sheriff depute, mayor, bailiff, under sheriff, deputy, and other person so granting such special warrant as aforesaid, shall be and they are hereby respectively saved harmless and indemnified against his Majesty, his heirs, and successors, and against all and every other person or persons whomsoever, for or on account of any escape of any person or persons who shall or may be taken by virtue of any such warrant as aforesaid, which shall happen

(a) An action against an officer for acting under such a warrant may be removed from the Court of Common Pleas into the Exchequer. (*Liddon* v. *East*, 1 *C. & Jerv.* 12).

between the time of taking such person or persons, and the time of such person or persons being committed to proper gaol or prison, or offered and tendered to the gaol keeper or other person having charge of such gaol or prison (who is hereby enjoined and required to receive every such person or persons so apprehended as aforesaid, and to give a receipt for the body or bodies of such person or persons), and of and from all actions, prosecutions, processes of contempt, and other proceedings for or on account of any such escape; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

(9). *Of proceedings for condemnation, &c.*

7 & 8 Geo. 4, c. 53.

(10). PROSECUTIONS AND PROCEEDINGS IN DIFFERENT COURTS.

(10). *Prosecutions, &c in courts.*

The statute 26 Geo. III. c. 77, s. 13, enacts, "That no person shall commence, prosecute, enter, or file any action, bill, plaint, or information, in any of his Majesty's courts, against any person for the recovery of any fine, penalty, or forfeiture made by any act relating to the Customs or Excise, unless in the *name of the attorney-general*, or of some officer or officers of the Customs or Excise; and if any action, &c. shall be commenced in any other name, the same shall be void, and the court in which such action shall have been commenced shall not suffer any proceedings to be had thereon."

By whom informations to be laid.

And the 46 Geo. III. c. 1, s. 12, after reciting the foregoing provision, extends the regulations thereof to all proceedings for penalties and forfeitures, under any act relating to the Excise, before the commissioners of Excise, or any three or more of them in England, or before any justice or justices of the peace in England or Scotland respectively.

By the 3 & 4 Will. IV. c. 53, s. 112, "No indictment shall be preferred or suit commenced for the recovery of any penalty or forfeiture under this or any other act relating to the Customs or Excise (except in the cases of persons detained and carried before one or more justices in pursuance of this act), unless such suit shall be commenced in the name of his Majesty's attorney general, or in the name of the lord advocate of Scotland, or unless such indictment shall be preferred under the direction of the commissioners of his Majesty's Customs or Excise, or unless such suit shall be commenced in the name of some officer of Customs or Excise, under the direction of the said commissioners respectively."

4 & 5 Will. 4, c. 53. Indictments to be preferred by order of commissioners, and suits to be in name of Attorney General.

By sect. 116 of the same statute, which alters the 5 Geo. IV. c. 94, it is enacted, "That in case of any information or proceedings had under this or any other act relating to the Customs, the averment that the commissioners of his Majesty's Customs or Excise have directed or elected such information or proceedings to be instituted, or that any vessel is foreign, or belonging wholly, or in part to his Majesty's subjects, or that any person detained or found on board any vessel or boat liable to seizure is or is not a subject of his Majesty, or that any person detained is or is not a seafaring man, or fit and able to serve his Majesty in his naval service (*a*), or that any person is an officer of the Customs, and where the offence is committed in any port in the United Kingdom, the naming of such port in any information or proceedings, shall be sufficient, without proof as to such fact or facts, unless the defendant in such case shall prove to the contrary."

Averment of certain matters to be sufficient, unless contrary proved.

Sect. 118. "That if upon any trial a question shall arise whether any person is an officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or an officer of Customs or Excise, evidence of his having acted as such shall be deemed sufficient, and such person shall not be required to produce his commission, or deputation, unless sufficient proof shall be given to the contrary; and every such officer, and any person acting in his aid or assistance, shall be deemed a competent witness upon the trial of any suit or information on account of any seizure or penalty as aforesaid, notwith-

Viva voce evidence may be given that a party is an officer, as he is to be deemed a competent witness, although entitled to the whole or a share of the seizure or penalty on conviction.

(*a*) See alteration as to this, 4 Will. 4, c. 13, *ante*, p. 549.

(10). *Prosecutions, &c. in courts, &c.*

4 & 5 Will. 4, c. 53 What shall be deemed sufficient evidence of order of commissioners of Customs or Excise.

standing such officer or other person may be entitled to the whole or any part of such seizure or penalty, or to any reward upon the conviction of the party charged in such suit or information."

Sect. 119. "That upon the trial of any issue, or upon any judicial hearing or investigation touching any penalty or forfeiture under any law or laws relating to the Customs or Excise, or to the law of navigation, where it may be necessary to give proof of any order issued by the commissioners of his Majesty's Treasury, or by the commissioners of his Majesty's Customs or Excise respectively, the letter or instructions which shall have been officially received by the officer of Customs or Excise at the place or district where such penalty or forfeiture shall have been incurred, or shall be alleged to have been incurred, for his government, and in which such order is mentioned or referred to, and under which said instructions he shall have acted as such officer, shall be admitted and taken as sufficient evidence and proof of such order to all intents and purposes whatsoever."

The practice, therefore, of the commissioners of Excise, which prevailed before the passing of these acts, of not receiving informations from any other than their officers (*a*), is now strictly necessary, as well in respect to prosecutions before them, as to informations before the justices (*b*). By these means informations at the suit of common informers are superseded, and the practice of filing collusive informations, which first gave rise to these statutes, is entirely prevented (*c*).

7 & 8 Geo 4, c. 53 Prosecutions may be in superior courts of record, but must be within three years.

By the 7 & 8 Geo. IV. c. 53, s. 57. "That all penalties imposed by this act, or any other act or acts of Parliament relating to the *revenue of Excise*, and incurred for or by reason of any offence or offences against this act, or the said other acts or any of them, may be sued for and recovered, and all goods, commodities, and chattels seized as forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, may be returned for condemnation and condemned, in his Majesty's Courts of Exchequer at Westminster, Edinburgh, or Dublin respectively, as the cause of such prosecution may have arisen in England, Scotland, or Ireland (*d*). Provided always, that the proceedings for the recovery of any such penalty or penalties, or for the condemnation of any such goods, commodities, or chattels, shall be commenced respectively within three years next after the commission of the offence or offences by which such penalty or penalties shall have been incurred, or after the seizure of such goods, commodities, or chattels shall have been made."

Courts of Exchequer in Scotland and Ireland to exercise the like jurisdiction and employ the same process for the recovery of the Excise revenue as the Court of Exchequer in England.

Sect. 58. "That *his Majesty's Courts of Exchequer in Scotland and Ireland* respectively, and the barons and judges of the said courts respectively, shall and they are hereby respectively empowered, authorized, and required to exercise in Scotland and Ireland respectively the like jurisdiction, and to make, issue, hold, and enforce the like rules, orders, process and proceedings in and for the condemnation of any goods, commodities, and chattels forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, and in and for the recovery of any debts, duties, penalties, and forfeitures due to his Majesty, his heirs or successors, arising from or relating to the revenue of Excise, or incurred under or by virtue of this act, or the said other acts or any of them, as are directed by this act to be, or as at and immediately before the commencement of this act are, or as hereafter may be exercised, made, issued, held, or enforced for such purposes respectively in or by his Majesty's Court of Exchequer in England, and the barons and judges thereof, and according to the practice of such last-mentioned court. Provided always, that nothing hereinbefore

Nothing herein

(*a*) *R.* v. *Steventon*, 2 *East*, 368.

(*b*) The 48 Geo. III. c. 84, is an exception to this rule.

(*c*) See 12 Geo. I. c. 28, s. 28. *Howard, Excise*, 49.

(*d*) See general act, 24 Geo. II. c. 40, s. 29; 12 Car. II. c. 24, s. 45; 49 Geo. III. c. 81, s. 9.

contained shall repeal or be deemed or construed to repeal a certain act made in the sixth year of the reign of her Majesty Queen Anne, intituled '*An act for settling and establishing a Court of Exchequer in the north part of Great Britain called Scotland;*' but that the said act shall remain in full force and effect, except only so far as the same is hereinafter expressly repealed."

(10). *Prosecutions, &c. in courts, &c.*

7 & 8 G. 4, c. 53. to repeal 6 Anne, c. 26, except as hereinafter mentioned.

Sect. 59. "And for the recovery of any debt relating to the revenue of Excise, which, by record in any of his Majesty's Courts of Exchequer in England, Scotland, or Ireland, shall be due to his Majesty, his heirs or successors, in any case where the person or persons of the debtor or debtors, or the estate or effects of such debtor or debtors, shall be within the jurisdiction of either of such courts, but such debts shall not have originally accrued within the jurisdiction thereof; be it enacted, that where, by, or upon any judgment, decree, inquisition, specialty, account, or other matter recorded in any of his Majesty's Courts of Exchequer in England, Scotland, or Ireland, any debt relating to the revenue of Excise shall be due to his Majesty, his heirs or successors, a copy of the record of such judgment, decree, inquisition, specialty, account, or other matter, upon application made on behalf of his Majesty, his heirs or successors, to such court, shall be forthwith exemplified and transmitted, under the seal of the said court, to such other of his Majesty's said Courts of Exchequer as shall be named or specified in such application; and such last-mentioned court shall, upon application made on behalf of his Majesty, his heirs or successors, cause such copy so exemplified and transmitted to be forthwith enrolled in the rolls of the said last-mentioned court; and upon the same being so enrolled, the said last-mentioned court shall cause execution or other process to issue for recovering and levying the said debt so due, according to the rules and practice of such court, in like manner in all respects as if such record had been originally entered or filed in the said last-mentioned court, or the said debt had originally accrued within the jurisdiction thereof; and the proceeds of such debt, when so recovered, shall be accounted for and paid over in the same manner as if the same had been recovered within the jurisdiction of the court in which such debt originally accrued."

Exemplification of Excise debt of record in any of the Courts of Exchequer in England, Scotland, or Ireland, may be transmitted to any other courts, and the debt recovered there.

Sect. 60. "And whereas it is fit to provide for the appearance of every person to any *writ or process of subpœna* issued against such person out of the Court of Exchequer in England, Scotland, or Ireland, whether to answer his Majesty in such court, concerning any articles on behalf of his Majesty to be there objected against such person, or to give evidence upon the trial of any information or issue depending in such court, or upon any inquisition to be taken upon any commission or writ of extent issued out of such court, in whatever part of the United Kingdom the person against, or to whom such subpœna respectively may be issued shall be or reside; be it therefore enacted, that the service of any writ of subpœna or other process issued out of any of his Majesty's Courts of Exchequer in England, Scotland, or Ireland, upon any person who shall reside or be in any part of the United Kingdom out of the jurisdiction of such court, requiring the appearance of such person to answer his Majesty in the said court concerning any articles to be there on his Majesty's behalf objected, *or to give evidence upon the trial of any information or issue depending in such court* (*a*), or upon any inquisition to be taken upon any commission or writ of extent issued out of such court, shall be as good and effectual in law as if such writ or process had been served in that part of the United Kingdom within the jurisdiction of the court where the person so served shall be required to appear; and in case any person so served shall not appear according to

Service of subpœna in any one part of the United Kingdom valid as to appearance in any other part.

(*a*) See what is a sufficient subpœna or summons to a witness, *R.* v. *Stevenson and others*, 2 *East*, 362.

(10). *Prosecutions, &c. in courts, &c.*

7 & 8 Geo. 4, c. 53.

the exigence of such writ or process, it shall be lawful for the court out of which the same shall have been issued, upon proof being made of the service thereof to the satisfaction of such court, to transmit a certificate of such default, under the seal of such court, to the Court of Exchequer in that part of the United Kingdom in which such writ or process shall have been served; and it shall thereupon be lawful for such last-mentioned court in all such cases, and such last-mentioned court is hereby authorized and required to proceed against and punish the person so having made default, in like manner as such last-mentioned court might lawfully have done if such person had neglected or refused to appear in obedience to a like writ of subpœna or other process issued out of such last-mentioned court. Provided always, that in cases where the subpœna or other process served shall be to give evidence, no person so having made default as aforesaid shall be proceeded against or punished by reason or on account thereof, unless it shall be made to appear to the satisfaction of such last-mentioned court, that a reasonable and sufficient sum of money to defray the expenses of so attending to give evidence, and of returning from giving such evidence, had been tendered to such person previous to such default."

No action, &c. to be commenced, or writ of appraisement issued, unless by order of commissioners, or in name of the attorney general, or officer of *Excise or Customs* (a).

Sect. 61. "That it shall not be lawful to commence, prosecute, enter, file, or exhibit any action, bill, plaint, or information, or other legal proceeding, against any person or persons, for the recovery of any penalty or forfeiture incurred under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise or Customs, or to issue or cause to be issued any writ of appraisement for the condemnation of any goods, commodities, or chattels whatsoever, seized as forfeited under or by virtue of this act, or the said other acts or any of them, except *by order of the commissioners of Excise or Customs*, or by order of the commissioner or commissioners and assistant commissioner of Excise or Customs in Ireland, and *in the name and at the suit of an officer of Excise or Customs, or by and in the name and at the suit of his Majesty's attorney or solicitor general for England or Ireland* respectively, in *England* or *Ireland* respectively, or by order of the commissioner or commissioners and assistant commissioners of Excise or Customs in Scotland, and in the name and at the suit of such officer, or by and in the name and at the suit of the lord advocate or his Majesty's solicitor general for Scotland in Scotland; and if any such action, bill, plaint, or information, or other legal proceeding, or writ of appraisement shall be commenced, prosecuted, entered, filed, exhibited, or issued in any other manner than as aforesaid, such action, bill, plaint, information, or other legal proceeding, or writ of appraisement, and all proceedings thereupon respectively had, shall be and are hereby *declared to be null and void*; any law, custom, or usage to the contrary thereof notwithstanding: Provided always, that nothing herein contained shall be deemed or construed to extend to any summary proceeding by or at the instance of any officer of Excise or Customs, for the conviction *upon immediate arrest* of any person or persons under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise or Customs."

Not to extend to summary proceedings on arrests.

4 & 5 Will. 4, c. 51.

Expenses of prosecutions before justices how to be defrayed.

The 4 & 5 Will. IV. c. 51, s. 21, enacts, "That in any prosecution for recovery of any penalty incurred, or for the condemnation of any goods or chattels seized as forfeited, under any act of Parliament relating to the revenue of Excise, and carried on before the commissioners of Excise or any justices of the peace, the commissioners of Excise may order the expenses of such prosecution to be paid out of the revenue of

(a) This puts an end to informations by common informers, and collusive informations. The enactment in 26 Geo III. c. 77, s. 13, was confined to proceedings in the superior *courts*, and did not extend to proceedings before commissioners of Excise or justices. (*R.* v. *Stevenson and others*, 2 *East*, 362).

Excise, and a sum of money to be paid to the officers concerned in such prosecution, or the persons through whose information the offence shall have been discovered or the seizure made, in the same manner as they are authorized to do in prosecutions carried on in the Court of Exchequer."

(10). *Prosecutions, &c. in courts, &c.*

7 & 8 Geo. 4, c. 53.

(11). *Proceedings, &c. before justices, &c*

Prosecutions before commissioners of Excise or justices of the peace (a).

(11). PROCEEDINGS FOR PENALTIES, &C. BEFORE COMMISSIONERS OF EXCISE AND JUSTICES; OF APPEAL, &C.

By 7 & 8 Geo. IV. c. 53, s. 65. "That for the recovery of any penalty imposed by this act, or any other act or acts of Parliament relating to the revenue of Excise, and incurred for or by reason of any offence committed against this act, or the said other acts or any of them, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or the said other acts or any of them, where the offence shall have been committed, or the person or persons committing the same shall be found, or where the goods, commodities, or chattels shall have been seized as aforesaid, within the limits of the chief office of Excise in London, an *information* thereupon may be *exhibited* before (b), and be heard, adjudged, and determined by, any three or more of the commissioners of Excise; and where the offence shall have been committed, or the person or persons committing the same shall be found, or where the goods, commodities, or chattels shall have been seized as aforesaid, in any part of the United Kingdom out of the limits of the said chief office, the *information* thereupon may be *exhibited* before any one or more of his Majesty's justices of the peace for the county, shire, division, city, town, or place wherein the offence shall have been committed, or the person or persons committing the same shall be found, or where the goods, commodities, or chattels shall have been seized as aforesaid; and such information shall and may be heard, adjudged, and determined by any *two* or more of his Majesty's justices of the peace for the said county, shire, division, city, town or place (c); and such commissioners of Excise, and any two or more of such justices of the peace respectively, shall and they are hereby respectively authorized and required, upon any such information having been so exhibited as aforesaid, and upon the appearance and pleading of the person or persons against whom such information shall have been exhibited, or who shall claim any goods, commodities, or chattels in such information alleged to have been forfeited, or in default of such appearance and pleading, upon proof of the service of such summons of such person or persons as hereinafter mentioned, to proceed to the examination of the fact or facts in such information alleged, and to give judgment (d), as well for any such penalty or penalties which upon the due examination of one or more credible witness or witnesses upon oath, or upon the voluntary confession of the party accused, shall be found to have been incurred, as for the condemnation of any goods, commodities or chattels seized as aforesaid, which upon such examination or confession shall be found to be forfeited, or respectively as the case may require; and such commissioners and justices respectively shall and they are hereby authorized and required thereupon to award and grant a warrant or warrants under their hands for the due execu-

(a) See former provisions, 24 Geo. II. c. 40, s. 29; 12 Car. II c. 24, s. 45; 49 Geo. III. c. 81, s. 9.

(b) It is said not to be necessary that the information should be in writing. 1 *Shaw, Excise*, 342, 343. See *post*, III. "Of the proceeding, &c." but semble that it should be in writing, see section 71.

(c) In *R.* v. *Abbot*, *H. T.* 1782, *Dougl.* 55, *note*, it was contended by counsel, and assented to by the court, that the commissioners of Excise within the bills of mortality, and justices of the peace in all other places, are put exactly upon the same footing by the different statutes relating thereto.

(d) The judgment may be verbally given, and afterwards drawn up in form. (1 *East*, 184; 1 *T. R.* 320; 2 *Lord Raym.* 1376; 2 *Stra.* 608).

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo. 4, c. 53. No information exhibited before justices of the county shall be objectionable, because there are distinct commissions of the peace within whose jurisdiction the offence was committed.

tion of and carrying into effect, as hereinafter mentioned, such judgment: Provided always, that where any such information as aforesaid shall be exhibited before any justice or justices of any county or shire in England, Scotland, or Ireland respectively, in which there are several and distinct commissions of the peace, no information thereupon exhibited before any such justice or justices, nor any judgment thereupon given by such justices, nor any warrant or warrants thereupon granted for the due execution thereof, shall be subject or liable to any objection whatsoever by reason of any offence alleged in such information having been committed, or the person or persons committing the same having been found, or the goods, commodities, or chattels having been seized as aforesaid, in any division, city, town, or place of such county or shire having local jurisdiction, whether such city, town, or place be or be not a county in or of itself; any thing in this act, or any other act or acts of Parliament, to the contrary thereof in anywise notwithstanding."

4 & 5 Will. 4, c. 53. Offences under Custom's laws may be sued for by order of commissioners of Excise, and in the name of officers of Excise.

The 4 & 5 Will. IV. c. 51, s. 28, enacts, "That any penalty or forfeiture incurred under any act or acts of Parliament relating to the revenue of Customs may be sued for and recovered by order of the commissioners of Excise, and in the name of an officer of Excise, as well as by order of the commissioners of Customs, and in the name of an officer of Customs: and where any election or option is or shall be given by any such act or acts to the commissioners of Customs, which of two penalties shall be sued for, such election or option may be exercised by the *commissioners of Excise*, and may be averred in the information to have been *made by such last-mentioned commissioners*, and such averment shall be deemed and taken to be sufficient proof of such order, and of such election or option, without any further evidence thereof."

The 4 & 5 Will. IV. c. 51, s. 18, repeals the 7 & 8 Geo. IV. c. 53, s. 66, and in lieu thereof, enacts by

Information to be exhibited before commissioners of Excise or justices within four months after offence committed or seizure made, and parties to be summoned.

Sect. 19. "That every information for the recovery of any penalty, or for the condemnation of any seizure, shall be exhibited before the commissioners of Excise, or justice or justices of the peace respectively, within four calendar months next after the offence or offences alleged in such information shall have been committed, or the goods, commodities, chattels or things therein alleged to have been forfeited shall have been seized: and a notice in writing of such information having been so exhibited shall be given to the person against whom the same shall have been exhibited within one week next after the exhibiting of such information; and the commissioners of Excise, or justice or justices of the peace, before whom any such information shall be exhibited, are hereby respectively authorized and required to summon every person against whom any such information shall have been exhibited to appear and plead to and to attend the hearing of such information at a time and place to be named in such summons, which summons shall be served upon every such person or persons ten days at the least before the time appointed in such summons, and which summons may be added to or may include such notice as aforesaid, or may be separate and apart therefrom, and be served at another and different time, subsequent to the delivery of such notice, at the option of the prosecutor: Provided always, that where such information shall be exhibited for the recovery of double the value of any duty or duties neglected to be paid or cleared off, it shall be sufficient if such summons be served twelve hours at the least before the time appointed in such summons; and provided also, that in all cases it shall be deemed and taken to be sufficient delivery and service of any such notice and summons as aforesaid if a copy of the same be left at or upon the place used or occupied by any such person or persons respectively for carrying on his or their trade or business, or at the building or place where any such offence shall have been committed, or such seizure made, or at the place of residence, or with the wife or child or servant of any such person or persons, the

same being directed to such person or persons by the right or assumed name or names of such person or persons; or where any such offence shall have been committed or discovered in transit, or any seizure made in transit, and the place of business or residence of the offender shall be unknown to the person discovering such offence or making such seizure, it shall be sufficient if such notice and summons, or a copy thereof, be affixed at or upon such conspicuous part of the office of Excise next to where such offence shall have been committed or discovered, or seizure made, directed to such offender or offenders by his or their right or assumed name or names, if the same shall be known to the prosecutor, and if not known, without any name or names."

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo. 4, c. 53.

Two or more justices to meet every three calendar months, or oftener, to adjudge Excise cases.

By the 7 & 8 Geo. IV. c. 53, sect. 67. "That the justices of the peace, or any two or more of them, in the several counties, shires, divisions, cities, towns and places throughout the United Kingdom, shall meet once in every three calendar months in their respective jurisdictions, or oftener if there shall be need or occasion so to do, to receive, hear, adjudge, and determine all matters and things brought before them relating to the revenue of Excise, and all informations exhibited or to be exhibited within such jurisdiction, for or in respect of any penalty incurred, or for the condemnation of any goods, commodities, or chattels seized as forfeited, under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise: Provided always, that if it shall happen that any justice or justices of the peace before whom any such information shall have been exhibited as aforesaid, or before whom any proceedings shall have been had upon any such information, shall die or be absent at any time after such information shall have been so exhibited, and before the person or persons against whom such information shall have been exhibited shall appear or plead to such information, or before any judgment shall be thereupon given, or before any judgment thereupon given shall be duly executed, so that the further attendance of any such justice or justices thereupon cannot be procured, it shall be lawful for any other justice or justices of the peace within the same jurisdiction to act therein for and in lieu of the justice or justices of the peace so dying or absent, in all respects relating to such information, and the due completion of the proceedings thereupon, in the same manner as if such information had been at first exhibited before such other justice or justices respectively; and that all powers and authorities, rules and regulations, given and granted by any act or acts of Parliament relating to justices of the peace, or to constables or other officers acting under their authority, respecting summary proceedings, shall be enforced, and shall be applied to and executed (excepting wherein altered or otherwise specially provided for by, or which shall be repugnant to or inconsistent with, this act), for the conviction of any person or persons prosecuted by order of the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, for any penalty incurred by such person or persons under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, and for the levy of any such penalty, or for the imprisonment of any such offender or offenders, in the same manner as if such powers and authorities, rules and regulations, had been and were repeated and contained in the body of this act."

Regulations in case of death or absence of justice during proceedings.

Reference to former general powers of justices.

No officer of Excise to act as a justice in Excise cases, nor any Excise trader in any case relating to his trade.

Sect. 68. "That it shall not be lawful for any assistant commissioner of Excise, or for any officer of Excise or person employed in the collection or management of the revenue of Excise, to act as a justice of the peace in any part of the United Kingdom, in the execution of any of the powers, authorities, clauses, matters, or things contained in this act, or in any other act or acts of Parliament relating to the revenue of Excise; and that it shall not be lawful for any trader subject to the Excise laws to act as a justice of the peace as aforesaid in any case which relates to the particular trade or business of such trader, or in any case in which

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo. 4, c. 53.

he shall be in anywise, as such trader, concerned or interested; and if any such assistant commissioner, or any such officer or person employed as aforesaid, or any such trader as aforesaid, shall presume to act as a justice of the peace, contrary to the true intent and meaning of this act, all proceedings in that behalf shall be and the same are hereby declared to be utterly null and void to all intents and purposes."

Penalties of treble value to be either treble the value of the best goods of the like kind, or 100*l.*, at election of commissioners of Excise or prosecutor.

Sect. 69. "That where by any act or acts of Parliament relating to the revenue of Excise or Customs, a penalty of treble the value of goods or commodities is imposed for or in respect of any offence committed by any person or persons against such acts, or any of them, every person so offending shall thereupon severally forfeit and lose for every such offence, either treble the value of the goods or commodities, to be estimated and taken according to and at the rate and price for which the best goods or commodities of the like sort or kind and denomination for which the duty or duties thereon have been paid were sold for in London, Edinburgh, or Dublin respectively (as the penalty may have been incurred in England, Scotland, or Ireland respectively), at the time of the commission of such offence, or the sum of one hundred pounds in lieu and instead of such treble value, at the election of the commissioners of Excise or Customs, or the commissioner or commissioners and assistant commissioners of Excise or Customs in Scotland and Ireland respectively, or the person who shall inform or sue for the same."

Persons incurring Excise penalties may be prosecuted jointly or severally.

Sect. 70. "That where by this act, or any other act or acts of Parliament relating to the revenue of Excise, a penalty is imposed upon every person committing the offence by which such penalty is incurred, and such offence shall have been or shall be committed by several persons jointly, such several persons shall jointly and severally incur every such penalty, and it shall be lawful to proceed against such persons jointly or severally for the recovery thereof, as the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively may deem expedient; any thing in this act, or in any other act or acts of Parliament, to the contrary thereof notwithstanding."

Averment in information that the commissioners had ordered prosecution, &c. shall be deemed sufficient proof of such order, &c. (a).

Sect. 71. "That where, *in any information* for the recovery of any penalty, or for the condemnation of any goods, commodities, or chattels seized as forfeited under this act, or any other act or acts of Parliament relating to the revenue of Excise or Customs, any allegation or averment shall be made that such information was exhibited, or that the commissioners of Excise or Customs, or the commissioner or commissioners and assistant commissioners of Excise or Customs in Scotland and Ireland respectively, had ordered such information to be exhibited, or that the commissioners of Excise or Customs, or the commissioner or commissioners and assistant commissioners of Excise or Customs in Scotland and Ireland respectively, or the informant or person suing by such information, had made their or his election, as in such information shall be alleged or averred, such allegation and averment shall be, and the same respectively shall be deemed and taken to be *sufficient* proof of such facts so alleged or averred respectively, without any other or further evidence thereof."

By the 3 & 4 Will. IV. c. 51, s. 116, the above 71st section of the 7 & 8 Geo. IV. is so far qualified as that the averment shall be sufficient, "unless the defendant in such case shall prove to the contrary." *See ante*, p. 407.

What shall be sufficient proof, on trial, of any order of Treasury or commissioners of Excise (b).

Sect. 72. "That upon the trial of any indictment, information, action, suit, or prosecution whatsoever, or in any other legal or judicial proceeding, where it may be necessary to give proof of *any order* issued by the lord high treasurer or commissioners of the Treasury, or by the commissioners of Excise respectively, the letter or instructions which

(a) 5 Geo. IV. c. 94. (b) See 3 & 4 Will. IV. c. 51, s. 119, *ante*, p. 409.

shall have been officially received by the collector, supervisor, surveyor, or officer of Excise of the collection, district, or place in which the subject-matter of any such indictment, information, action, suit, or prosecution, or other legal or judicial proceeding, may have arisen, for the direction and government of such collector, supervisor, surveyor, or officer, and in which such order is mentioned or referred to, and under which said letter or instructions such collector, supervisor, surveyor, or officer, shall have acted, shall be admitted and taken to be sufficient evidence and proof of such order, to all intents and purposes whatsoever."

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo. 4, c. 53.

Commissioners and justices to proceed to hearing and judgment on the merits, without regard to defects in form.

Sect. 73. "That it shall be lawful for the commissioners of Excise and the justices of the peace respectively, and they are hereby respectively authorized and required, upon the appearance of any person or persons summoned upon any information, or in default of the appearance of such person or persons, and upon proof of the service as before mentioned of such summons as aforesaid, to proceed to the examination of the fact or facts alleged in such information, and of the witness or witnesses on either side, upon oath, touching the penalty or penalties alleged in such information to have been incurred, or the forfeiture of any goods, commodities, or chattels therein alleged to have been seized as forfeited, and thereupon to give judgment accordingly, notwithstanding any defect or defects of form which may appear in such information, or in any proceedings thereupon or relating thereto."

Witnesses summoned and not appearing, or refusing to give evidence, to forfeit 50*l.* (*a*).

Sect. 74. "That it shall be lawful for the commissioners of Excise and justice or justices of the peace, and commissioners of appeal under this act respectively, before whom any such information as aforesaid, or any matter or thing under this act, or any other act or acts of Parliament relating to the revenue of Excise, shall be judicially brought, and they are hereby respectively authorized and required to summon any and every person (other than the person or persons against whom such information is exhibited), in whatever part of the United Kingdom any such person so summoned shall then reside or be, to appear before the said commissioners or the justices or the said commissioners of appeal, who are to hear, adjudge, and determine such information, matter, or thing, at a certain time and place to be specified and set forth in such summons, to give evidence upon oath of the truth of any facts alleged in such information, or touching or relating thereto, or to such matter or thing as aforesaid; and every person, other than as aforesaid, being so summoned, and having the reasonable expenses for such attendance tendered, who shall neglect or refuse to appear according to the exigency of such summons, or who, having so appeared, shall refuse to take oath, or, if a Quaker, to affirm, or shall refuse to give evidence, or to answer, according to the best of his or her knowledge and belief, any legal question, when thereunto required, shall for every such default or offence forfeit and lose the sum of fifty pounds."

Officers of Excise to be competent witnesses notwithstanding any interest in the penalty or forfeiture under prosecution.

Sect. 75. "And whereas, for better securing his Majesty's revenue of Excise, and the encouragement of the officers and others (*b*) who shall detect or give information of any offence committed against the several acts of Parliament relating thereto, the penalties and forfeitures by such acts imposed are directed, where such penalties are recovered, or the goods, commodities, or chattels seized as forfeited are condemned, to be

(*a*) Where the statute 7 & 8 Will. III. c. 30, s. 24, enables the commissioners of Excise to summon witnesses before them, upon a charge exhibited against another for an offence against the Excise laws, and an information in a collateral proceeding recited such summons to have been duly made, proof of a printed summons distributed and issued in blank by order of the commissioners to their agents, and afterwards filled up by one of the latter without any special directions from the board, is sufficient, although not signed by any of the commissioners, nor issued in their individual names; such having been the constant usage in that respect since the introduction of the Excise. (*R.* v. *Steventon and others*, 2 *East*, 362). And see 4 Vict. c. 20, s. 31, any summons may be served by officers of Excise.

(*b*) See *ante*, p. 411, *note* (*b*).

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo. 4, c. 53.

divided between his Majesty and the person or persons who shall have detected or given information of the offences: and whereas, from the secret manner in which such offences are committed, it frequently happens that the officer of Excise, or other person detecting or informing of the offence, is the only or a principal witness to prove the same, but the offenders escape conviction by reason of objection being made and allowed to the competency of such witness on the trial or hearing for the recovery of such penalty, or the condemnation of such goods, commodities, or chattels, on account of his interest as a person entitled to a share of such penalty or seizure; and it is therefore expedient to remove all such objections: be it therefore enacted, that upon the trial or hearing of any information or other legal proceeding for the recovery of any penalty incurred, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, any officer of Excise, or any other person who shall or may be entitled to the whole or any share of such penalty or of such seizure, shall be admitted by the court in which, or the commissioners or the justices before whom, such information shall be tried or heard, to give evidence upon such information, and shall be deemed and taken to be a competent witness upon such trial or hearing, notwithstanding any such interest as aforesaid."

Proof of payment of duties, or that goods seized are not of the sort or kind alleged, shall lie upon proprietor or person claiming (a).

Sect. 76. "That if upon any information, for the recovery of any penalty or penalties incurred, or for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise or Customs, or in any action brought by the proprietor or claimer of such goods, commodities, or chattels, against any officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid and assistance of any such officer or person so employed as aforesaid, for any act, matter, or thing done in pursuance of any such act or acts of Parliament, any question shall be made or shall arise whether any duty of Excise or Customs has been paid upon or in respect of the goods or commodities in such information mentioned, or whether such goods, commodities, or chattels are respectively of such sort or kind as in such information is in that behalf alleged, the proof of the payment of such duty, or that the said goods, commodities, and chattels respectively are not of such a sort or kind as aforesaid, shall lie upon the proprietor or claimer thereof."

Judgment to be entered by default against a prisoner who shall not appear and plead.

Sect. 77. "That where any person or persons shall be in prison on any account whatsoever, and any information shall be exhibited before the commissioners of Excise, or any justice or justices of the peace, against such person or persons, for the recovery of any penalty or penalties incurred by such person or persons, or for the condemnation of any goods, commodities, or chattels seized as forfeited, under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, claimed by such person or persons, and such person or persons, on a copy of such information being delivered to the gaoler, keeper, or turnkey of the prison wherein such person or persons shall be confined or imprisoned, with a summons to appear and plead to and to attend the hearing of such information, at a time and place in such summons mentioned, shall not appear and plead in person, or by some person duly authorized in that behalf, to such information, at the time and place so mentioned, such proceedings shall be thereupon respectively

(a) See 12 Geo. I. c. 28, s. 8; 23 Geo. III. c. 70, s. 35. If the officer prove a condemnation in the *Exchequer*, this is conclusive evidence that the property is vested in the King, and a complete bar to an action. (*Scott* v. *Shearman*, 2 *Bla. R.* 977; *Geyer* v. *Aguilar*, 7 *T. R.* 696). A conviction before justices is conclusive. (*Brittain* v. *Kinnard*, 1 *Brod. & Bing.* 432; 4 *Moore*, 50). *Query*, whether a condemnation by the commissioners of Excise is conclusive. (*Henshaw* v. *Pleasance*, 2 *Bla. R.* 1174; 1 *Phil. Evid.* 335).

had as are hereinbefore provided and directed in cases of default of appearance to any such information; any law, custom, or usage to the contrary thereof notwithstanding."

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo. 4, c. 53.

Power of commissioners and justices of peace to mitigate penalty to one fourth.

Sect. 78. "That it shall be lawful for the commissioners of Excise and justices of the peace respectively, when they shall see cause, except in cases where there is or shall be any provision that no mitigation shall be made by the justices of the peace, and they are hereby respectively authorized and empowered to mitigate any penalty incurred for any offence committed against this act, or any other act or acts of Parliament relating to the revenue of Excise, for which any information shall have been exhibited before such commissioners or justice or justices respectively, as they the said commissioners and justices respectively in their discretion shall think fit, so as such mitigation shall not reduce such penalty to less than one fourth part thereof; and that every such mitigation, and payment thereupon accordingly made, shall be a sufficient discharge of every such penalty to the person or persons convicted of such offence: Provided always, that it shall be lawful for the commissioners of Excise, and the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, when they shall see cause, and they are hereby authorized and empowered to further mitigate or entirely remit any such penalty; anything hereinbefore contained to the contrary thereof in anywise notwithstanding."

Commissioners may further mitigate or entirely remit penalty.

4 & 5 Will. 4, c. 51

Commissioners of Excise and justices not authorized to mitigate penalty of double duty for non-payment of Excise duties.

In allusion to the above section, the 4 & 5 Will. IV. c. 51, s. 20, reciting "that whereas doubts have been entertained whether, under the provision of the said recited act, authorizing the mitigation of penalties to one fourth, the justices of the peace respectively, before whom any information may be exhibited for the recovery of double the value of any duty or duties of Excise neglected to be paid or cleared off, have not power to mitigate the penalty of such double value," enacts, "That nothing in the said recited act, or in any other act or acts relating to the revenue of Excise, shall be construed to authorize or empower any justices of the peace, on the hearing and determining of any information for the recovery of double the value of any duty or duties of Excise neglected to be paid or cleared off, to mitigate the said penalty of the double value of such duties, but the said justices shall in all cases convict the defendant or defendants in the full penalty of double the value of the duties which shall be proved to have been neglected to be paid and cleared off, and shall give judgment accordingly: and no justice of the peace before whom any person having been arrested and detained under any act or acts relating to the revenue of Excise, and liable to the payment of any penalty, and in default of the immediate payment thereof to be committed to prison for a limited period, shall have any power or authority to mitigate such penalty, except where a special power for the mitigation of such penalty shall be given; anything in the said recited act, or any other act or acts relating to the revenue of Excise, notwithstanding."

Expences of prosecution before commissioners of Excise or justices of the peace may be ordered to be paid out of the revenue.

Sect. 21. "That in any prosecution for recovery of any penalty incurred, or for the condemnation of any goods or chattels seized as forfeited, under any act of Parliament relating to the revenue of Excise, and carried on before the commissioners of Excise or any justices of the peace, the commissioners of Excise may order the expences of such prosecution to be paid out of the revenue of Excise, and a sum of money to be paid to the officers concerned in such prosecution, or the persons through whose information the offence shall have been discovered or the seizure made, in the same manner as they are authorized to do in prosecutions carried on in the court of Exchequer."

In case of the death, removal, or absence of officer in whose name information exhibited, proceedings may be carried on by any other officer.

Sect. 22. "That where in any case any information for the recovery of any penalty incurred, or the condemnation of any goods, commodities, articles, or things forfeited, under any law or laws relating to the revenue of Excise, shall by order of the commissioners of Excise be exhibited before the commissioners of Excise, or before any justice or justices of the peace, and the officer of Excise by whom or in whose name

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo. 4, c. 53.

such information shall be or shall have been exhibited shall die, or be removed or discharged, or at the time of hearing may be absent, such information shall not, by such death, removal, or discharge, or by the absence of such officer, abate or be diminished, but all the proceedings on such information shall be continued and may be proceeded on by any other officer of Excise in the name of the officer by whom the same shall have been exhibited: and the said commissioners of Excise, and the justices shall, on the day named and appointed in the summons to be issued in that behalf, proceed to hear and determine the matter of such information, and shall examine all such witnesses as shall be tendered to them for examination by any officer of Excise in support of such information, notwithstanding such death, removal, or discharge, or the absence of the officer of Excise by whom or in whose name such information shall be or shall have been exhibited: and all the proceedings on such information, and all proceedings for recovery of any penalty awarded thereon, or for the arrest and imprisonment of any defendant for non-payment of such penalty, or for condemnation of any goods, commodities, articles, or things, shall be good, valid, and effectual."

7 & 8 Geo. 4, c. 53. No certiorari at the suit of a defendant to supersede or affect any proceedings by commissioners of Excise or justices of the peace.

7 & 8 Geo. IV. c. 53. s. 79. "That no writ of certiorari or other writ or process shall be issued at the suit of any defendant, out of any of his Majesty's courts of record in England, Scotland, or Ireland, nor shall any bill of suspension, advocation, or reduction be passed, nor shall any letter or letters of suspension, advocation, or reduction, or any other proceeding, be issued out of the court of session or court of justiciary in Scotland, to supersede, sist, stay, remove, or in anywise affect any information or judicial proceeding before the commissioners of Excise or commissioners of appeal in this act after-mentioned, or before any justice or justices of the peace in the United Kingdom, in pursuance of this act, or any other act or acts of Parliament relating to the revenue of Excise, or any judgment thereupon; and that every such information shall be tried and determined, and every such judicial proceeding shall be had and completed, and every such judgment executed, any such writ of certiorari or other writ or process, or bill or letter or letters of suspension, advocation, or reduction, or other proceeding notwithstanding: Provided always, that nothing herein contained shall extend, or be deemed or construed to extend, to any writ of certiorari sued or issued in such cases in behalf of his Majesty, out of his Majesty's Courts of Exchequer in England, Scotland, or Ireland respectively."

Proviso as to certiorari at the suit of the Crown out of the Exchequer.

In proceedings before commissioners of Excise, it shall be sufficient to mention that the information was exhibited before the commissioners of Excise, without specifying their names; and any three commissioners of Excise may sign warrants.

Sect. 80. "That it shall be sufficient, in the record or written account of any proceedings before the commissioners of Excise, to state that the information was exhibited to and before the commissioners of Excise, without stating their names; and that every adjudication and determination upon any such information, by any three or more of such commissioners, shall and the same is hereby declared to be good and valid in law, and may be executed and put in force by virtue of a warrant or warrants under the hands of any three commissioners of Excise, whether the commissioners setting their hands to such warrant or warrants shall or shall not happen to be the particular commissioners by whom such adjudication or determination was made, or whether such three commissioners so setting their hands to such warrant or warrants were commissioners at the particular time or times when such adjudication or determination as aforesaid was made; provided that the persons so setting their hands to such warrant or warrants shall at the time and times of such their setting their hands thereto actually be such commissioners; any law, custom, or usage to the contrary in anywise notwithstanding."

4 Vict. c. 20.

The 4 Vict. c. 20, s. 25, repeals the 81st section of the above act, as to the appointment of commissioners of appeal, and in lieu thereof, the following provisions are substituted:

Persons aggrieved by judgment of commissioners of

Sect. 26. "That in case any officer of Excise who shall exhibit any information, or any person against whom any information shall have

been exhibited, or who shall appear and claim any goods, commodities, or chattels alleged to be forfeited in any information exhibited before the commissioners of Excise, shall feel aggrieved by the judgment given thereon by such commissioners of Excise, it shall be lawful for such officer, or such person or persons, upon giving and lodging such notices as are by the said recited acts required, to appeal from such judgment to the barons of her Majesty's Court of Exchequer; and it shall be lawful thereupon for any one or more of the said barons, and they are hereby authorized and required, upon being served with notice of such appeal, at such place and at such time as he or they shall appoint, to hear, adjudge, and finally determine such appeal; and the baron or barons of the Exchequer by whom such appeal shall be heard, adjudged, and determined shall have all the same powers and authorities as are by the said recited acts given to the commissioners of appeal; and all the enactments, rules, regulations, and provisions in the said recited acts contained in respect to an appeal to the commissioners of appeal shall, except as altered or varied by this act, be in full force and effect, and shall be observed and complied with in all respects in the bringing, lodging, hearing, adjudging, and determining any such appeal to the barons of her Majesty's court of Exchequer, and in enforcing any judgment given thereon."

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo. 4, c. 53.

Excise may appeal to barons of Exchequer.

Sect. 27. "That the registrar of the commissioners of Excise shall be the registrar of the barons of her Majesty's court of Exchequer, as judges of appeal under this act, to or with whom all notices required to be delivered to or lodged with the registrar of the commissioners of appeal shall be delivered and lodged; and all acts, matters, and things to be done and executed by the registrar of the commissioners of appeal under the provisions of the said recited acts or either of them shall be done and executed by the said registrar or the commissioners of Excise, who shall be and he is hereby authorized and required to issue all summonses for compelling the attendance of any witness or witnesses to appear and give evidence on the hearing and determining of any such appeal, and to do all other acts touching and concerning such appeal, authorized, empowered, or required to be done by the registrar of the commissioners of appeal under the said recited acts."

Registrar of commissioners of Excise to be registrar of the barons on appeals.

Sect. 28. "That it shall be lawful for the said registrar, and for the clerk or clerks of the baron or barons of her Majesty's court of Exchequer hearing such appeal, to take, demand, receive and recover such fees from the appellant and respondent respectively in any such appeal as shall be fixed and appointed by any table of fees to be approved of and signed by the said barons of her Majesty's court of Exchequer, or any two or more of them."

Fees may be taken by registrar and baron's clerk.

Sect. 29. "That every person who, being summoned to appear and give evidence before a baron of her Majesty's court of Exchequer upon any such appeal, and who, having the reasonable expenses for his or her attendance tendered, shall neglect or refuse to appear at the time and place specified in the summons according to the exigency thereof, or who having appeared shall refuse to take oath, or, if a Quaker, to affirm, or shall refuse to give evidence, or to answer according to the best of his knowledge and belief any legal question when thereunto required, shall for every such default or offence forfeit fifty pounds."

Witnesses summoned on an appeal and not attending or refusing to give evidence to forfeit 50.

Sect. 30. "That the notice of the time and place when and where any appeal to the barons of her Majesty's court of Exchequer, or to the justices assembled at the quarter sessions of the peace, is to be heard, shall be given on the part of the appellant to or left at the place of abode of the respondent seven clear days at least before such appeal is to be heard and determined."

Seven clear days' notice to be given of hearing of appeal (*a*).

(*a*) By the 4 & 5 Will. IV. c. 51, s. 23, if there shall not be 20 days between giving notice of appeal and the next quarter sessions, the appeal shall be to the following sessions.

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo. 4, c. 53. Summons may be served by officers of Excise.

Sect. 31. "That any summons, notice, order, or other proceedings issued on any information exhibited before the commissioners of Excise, or any justice or justices, for the recovery of any penalty or the enforcing of any forfeiture incurred or to be recovered or enforced under any law or laws of Excise, or on any appeal against any judgment of the commissioners of Excise, or any justice or justices of the peace, on any such information, may be served by any officer of Excise or other person; and such service shall be good and legal service, any thing in any act or acts to the contrary notwithstanding."

4 & 5 Will. 4, c. 51. Witnesses tendered for examination at original hearing before commissioners or justices, may be examined on hearing appeal.

The 4 & 5 Will. IV. c. 51, s. 24, reciting that "whereas by the said recited act, (the 7 & 8 Geo. IV. c. 53), commissioners of appeal and justices at the quarter sessions shall not at the hearing of any appeal examine any evidence or witness or witnesses other than or different from the evidence and the witness or witnesses which and who shall have been before examined before the commissioners of Excise or justices of the peace respectively at the trial and hearing of the information upon which the original judgment appealed against shall have been given; and great inconvenience has been experienced by justices deciding on alleged defects in informations, and dismissing the same without any examination of witnesses, whereby the remedy of appeal hath been lost," enacts, "That where the commissioners of Excise or justices of the peace respectively before whom any information shall be exhibited shall dismiss such information without examination of witnesses, or shall refuse to examine any witness produced on the hearing of any information, the several witnesses refused to be examined shall be tendered to the said commissioners or justices respectively for examination on the part of the informer or defendant, as the case may be, and the said commissioners or justices respectively shall, on ascertaining the witnesses so tendered for examination to be present, cause their names to be taken down in writing, and shall transmit the same with the information and judgment to the commissioners of appeal or quarter sessions respectively; and the several witnesses so tendered for examination, and whose names shall be so transmitted, shall on the hearing of the appeal be examined in the case, although not examined before the commissioners or justices on the original hearing and judgment."

7 & 8 Geo. 4, c. 53. Proceedings upon determination of appeal.

Sect. 85. "That where the judgment of the commissioners of Excise or justices of the peace appealed against shall be affirmed by the court of appeal, such judgment shall be enforced and executed by the commissioners of Excise or justices of the peace respectively, in like manner as if there had been no such appeal; and that where the judgment appealed against shall be reversed, and another or different judgment given by the court of appeal than the judgment given by the commissioners of Excise or justices of the peace appealed against, such new judgment shall be enforced and executed, as hereinafter mentioned, by the commissioners of appeal, or justices of the peace at the general quarter sessions, by whom respectively such new judgment shall have been given."

Commissioners of Excise and justices to grant warrants for sale of goods, or levying of penalties.

* Sic.

Sect. 86. "That where any judgment is* by this act required to be enforced and executed by the commissioners of Excise or justices of the peace (the same not having been appealed against, or if appealed against, having been affirmed by the court of appeal) shall be for the condemnation of any goods, commodities, or chattels seized as forfeited, it shall be lawful for such commissioners of Excise, and justices of the peace respectively, and they are hereby respectively authorized and required to apply the money which shall have been so deposited as aforesaid in satisfaction of such judgment; and if the same shall not be sufficient to satisfy such judgment, to award and grant a warrant or warrants under their hands, to any officer or officers of Excise, for the sale of such goods, commodities, or chattels which they respectively shall have condemned; and where the judgment to be so enforced and executed shall be for any penalty or penalties, or for any sum or sums of money to which such penalty or penalties shall have been mitigated,

it shall be lawful for such commissioners of Excise or justices of the peace respectively, and they are hereby respectively authorized and required to award and grant a warrant or warrants under their hands, to any officer or officers of Excise, authorizing such officer or officers to levy the penalty or penalties, or sum or sums of money so adjudged, or so much thereof as shall not have been so satisfied as aforesaid, upon the goods and chattels of such person or persons so convicted (*a*), and either to detain and keep such goods and chattels in the house or place where the same shall have been found, or to remove the same to the next office of Excise" (*b*).

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo 4, c. 53

Sect. 87. "That where any judgment is* by this act required to be enforced and executed by the commissioners of appeal, or by the justices of the peace at the general quarter sessions on appeal, shall be for the condemnation of any goods, commodities, or chattels seized as forfeited, it shall be lawful for such commissioners of appeal or justices of the peace respectively, and they are hereby respectively authorized and required to grant a warrant or warrants, under their hands, or under the hands of any two of such commissioners or justices respectively, to any officer or officers of Excise, for the sale of the goods, commodities, or chattels, which they respectively shall have condemned; and where the judgment to be so enforced and executed shall be for any penalty or penalties, or for any sum or sums of money to which such penalty or penalties shall have been mitigated, it shall be lawful for such commissioners of appeal, or justices of the peace at the general quarter sessions respectively, and they are hereby respectively authorized and required to apply the money which shall have been so deposited as aforesaid in satisfaction of such judgment; and if the same shall not be sufficient to satisfy such judgment, to award and grant a warrant or warrants under their hands, or under the hands of any two of such commissioners or justices respectively, to any officer or officers of Excise, authorizing such officer or officers to levy the penalty or penalties, or sum or sums of money, so adjudged, or so much thereof as shall not have been so satisfied as aforesaid, upon the goods and chattels of such person or persons so convicted, and either to detain and keep such goods and chattels in the house or place where the same shall have been found, or to remove the same to the next office of Excise."

Commissioners of appeal and quarter sessions shall grant warrants for sale of goods or levy of penalties.

* *Sic.*

Sect. 88. "That it shall be lawful in any such levy warrant to order and direct therein that the goods and chattels upon which such levy shall be made shall be sold and disposed of so soon as conveniently may be after a certain time to be limited in such warrant for the sale thereof, (so as such time be not less than four days nor more than eight days), unless the penalty and penalties, or sum and sums of money for which such levy shall be made, shall, within the time limited for payment thereof as aforesaid, be paid and satisfied."

Any time not less than 4 nor exceeding 8 days to be appointed for sale of distress (*c*).

Sect. 89. "That it shall be lawful for the officer of Excise making such levy, and he is hereby empowered and required to deduct the penalty and penalties or sum and sums of money for which such levy shall be made, and all reasonable charges and expenses attending such levy, out of the money arising by such sale as aforesaid, and to return the overplus (if any) to the proprietor or proprietors of the goods and chattels upon which such levy shall have been made, or to the person or persons legally entitled thereto; and such officer shall, if required, show such warrant to the person or persons upon whose goods and chattels such levy shall be made, and shall suffer such person or persons to take a copy thereof; and every such warrant shall be of the same force

Penalty and expenses to be deducted from the sale, and overplus returned.

A copy of the warrant may be taken.

Force of the warrant.

(*a*) 18 Geo. II. c. 26, s. 13; and 5 Geo. III. c. 43, s. 26; 32 Geo. III. c. 10, s. 1; 28 Geo. III. c. 37, s. 21.

(*b*) See construction of a similar provision in 43 Geo. III. c. 74, in *Hutchins* v. *Morris*, 6 *B. & Cres.* 464; 9 *D. & Ry.* 499.

(*c*) See 27 Geo. II. c. 20, s. 1.

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo. 4, c. 53.

Where sufficient distress cannot be found, warrant may issue for arrest of person (a).

and effect in all respects as a writ of *fieri facias* issued out of his Majesty's court of Exchequer in England for the recovery of any debt due to his Majesty."

Sect. 90. "That for want of sufficient goods and chattels whereon such penalty and penalties, or sum and sums of money, with the charges and expenses aforesaid, may be levied, and on a return in writing made upon any levy warrant by any officer to whom such warrant may have been directed, to the persons by whom such warrant shall have been granted, or to the commissioners of Excise, or any one or more of the justices of the peace within whose jurisdiction respectively any such warrant shall have been issued, that such officer cannot find, within the jurisdiction in which such warrant shall have been issued, any goods and chattels of the person or persons against whom such warrant shall have been granted, whereon the same can be levied, or on a return as aforesaid, that part of such penalty and penalties, or sum and sums of money, charges, and expenses, has been levied or paid, and that such officer cannot find any further goods and chattels of the person or persons against whom such warrant shall have been granted (beyond the goods and chattels already seized and sold as aforesaid), within such jurisdiction as aforesaid, whereon the residue of such penalty and penalties, or sum and sums of money, charges, and expenses, can be levied, it shall be lawful for the persons by whom such warrant shall have been granted, or for any two or more of the commissioners of Excise, or any one or more of the justices of the peace to whom respectively such return shall have been made as aforesaid, and they are hereby respectively authorized and required thereupon to grant a warrant or warrants in manner aforesaid, to any officer or officers of Excise, to arrest and convey such person or persons to the common gaol or house of correction within his or their jurisdiction respectively, and there to deliver the person or persons so arrested, with a duplicate of such warrant or warrants, to the gaoler or keeper of such gaol or house of correction, there to remain and be kept by such gaoler or keeper until satisfaction be made of such judgment as aforesaid (c), or until such person or persons shall be ordered by the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, to be liberated or discharged; any law, bill of health, custom, or usage in England, Scotland, or Ireland, to the contrary thereof in anywise notwithstanding."

Imprisonment (b).

Fresh levy warrant may issue when goods are found after issue or execution of arrest warrant.

Sect. 91. "Provided always, that where any goods or chattels of and belonging to any person or persons against whom any such warrant for arrest shall have been granted shall be found at any time or times after the granting or execution of such warrant, it shall be lawful for the person or persons by whom such warrant shall have been granted, or for any two or more of the commissioners of Excise, or for any one or more of the justices of the peace in whose jurisdiction respectively any such goods or chattels shall be found, and he and they is and are hereby respectively authorized and required, notwithstanding the granting of such warrant of arrest, to award and grant a fresh warrant or warrants under his or their hand or hands to any officer or officers of Excise, to levy upon the goods and chattels so found any penalty or penalties, or any sum or sums of money, charges and expenses, for which the former levy warrant may have been granted, or to levy so much thereof as may not have been before paid; and upon payment and

(a) See 12 Car. II. c. 24; and 2 *Burn's J.*, 24 ed., 63; 1 *Shaw's Excise*, 363.

(b) See allowance to poor prisoners, *post*, sect. 113.

(c) As to a warrant of this nature, see *R.* v. *Rogers*, 1 *Dowl. & R.* 156.

satisfaction thereof, the warrant for arrest shall be discharged, and the person or persons arrested shall be forthwith liberated out of custody."

(11). *Proceedings, &c. before justices, &c.*

7 & 8 Geo. 4, c. 53.

Warrants to be executed in any part of the United Kingdom, upon indorsement by justice of the peace for the place in which the same shall be executed (a).

Sect. 92. "That where any such warrant as aforesaid shall be granted and cannot be executed by reason that sufficient distress, or that the person or persons against whom the same shall have been granted, cannot be found within the limits of the juridiction of the commissioners or justices in which such warrant shall have been issued, it shall be lawful for any one or more of the justices of the peace for any other county, shire, division, city, town, or place, within the United Kingdom, and such justice or justices is and are hereby respectively authorized and required to indorse his or their name or names respectively upon such warrant; and such warrant and indorsement thereon shall be a sufficient authority to the officer or officers of Excise to whom such warrant shall be directed, or having the execution thereof, to execute the same in such other county, shire, division, city, town, or place, and to levy as aforesaid the penalty and penalties, or sum and sums of money, for which such warrant shall have been granted, or so much thereof as may not have been before paid upon the goods and chattels of and belonging to the person or persons against whom such warrant shall have been granted, which shall be found within the jurisdiction of the justice or justices indorsing such warrant, or to arrest and convey such person or persons to the common gaol or house of correction of the county, shire, division, city, town, or place where such warrant shall have been executed, there to remain until delivered, as by this act is before directed: Provided always, that no action of trespass or false imprisonment, nor any information or indictment, or other prosecution, shall be brought, commenced, or prosecuted against any justice or justices of the peace respectively for or by reason of his or their having granted subsidiary warrants, or indorsed any warrant in pursuance and under the directions of this act, in execution of any judgment, but it shall be lawful for any person or persons to bring or prosecute his, her, or their action or suit against the commissioners or justices respectively by whom the original warrant in execution of such judgment shall have been granted, in the same manner as such person or persons might have done if this act had not been made."

No action shall be brought against any justice for granting or indorsing warrant.

(12). Noli Prosequi, Staying Proceedings, &c.

(12). *Of entering noli prosequi, &c.*

The attorney general may enter a noli prosequi in any prosecution under the Excise laws.

By the 7 & 8 Geo. IV. c. 53, s. 97. "That whenever any prosecution shall be commenced or depending for the recovery of any penalty incurred, or for the condemnation of any seizure made under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, it shall be lawful for his Majesty's attorney general, or if there be no attorney general, for his Majesty's solicitor general in England and Ireland respectively, or for the lord advocate, or if no lord advocate, for the solicitor general in Scotland, if it shall appear to his satisfaction that such penalty or forfeiture was incurred without any intention of fraud, or of offending against any law of Excise, to stop all further proceedings by entering a *noli prosequi*, or otherwise, to or on such prosecution, as well with respect to the share of such penalty or forfeiture to which any officer or other person shall or may claim to be entitled, as to the share thereof belonging to his Majesty; any act or acts of Parliament to the contrary thereof in anywise notwithstanding."

Staying proceedings, &c.

Commissioners may forbear to prosecute for penalties, or order

Sect. 98. "That in all cases where any penalty or forfeiture shall be incurred under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, and it shall appear to the satisfaction of the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland

(a) See a further provision in 32 Geo. III. c. 10, s. 1.

(12). *Of staying proceedings, &c.*

7 & 8 Geo. 4, c. 53. seizures to be restored, or compound prosecutions, at any time before judgment (a).

and Ireland respectively, that the same was incurred without any intention of fraud, or of offending against this act, or any other act or acts of Parliament relating to the revenue of Excise, it shall be lawful for such commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, to forbear to order any prosecution for the recovery of such penalty, or, upon *such terms and conditions as they respectively shall order in that behalf* (b), to forbear to order any prosecution for the condemnation of such seizure, and to restore such seizure to the proprietor or proprietors or claimant or claimants thereof; and that in all cases where any prosecution shall have been commenced, or shall be depending, for the recovery of any duty or any penalty incurred, or for the condemnation of any seizure made under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, it shall be lawful for the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, at any time before judgment shall be thereupon respectively entered up or given, to compound any such prosecution respectively, by the acceptance of such sum of money as they respectively shall deem fit and reasonable in that behalf, for any such duty, or in mitigation of any such penalty, or for and in lieu of the value of any such seizure, in or by way of compromise of such prosecution; and upon payment and satisfaction thereof to stay all further proceedings, and to restore the seizure to the proprietor or proprietors, or claimant or claimants thereof, making or entering into such compromise: Provided always, that if any such proprietor or claimant of any such seizure as aforesaid shall accept such terms and conditions as aforesaid, or shall receive back any such seizure upon such terms and conditions, no such proprietor or claimant shall have or be entitled to maintain any action or suit for any recompence or damages on account of the seizure or detention thereof; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

If terms accepted, or seizures received, no proceedings to be brought for detention.

Treasury may order seizures to be restored, or penalties mitigated or remitted, before or after judgment, on such terms as they shall direct.

Sect. 99. "That in all cases where any penalty or forfeiture shall be incurred under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, it shall be lawful for the lord high treasuer, or any three or more of the commissioners of the Treasury, if he or they shall see cause, by any order for that purpose to be made under his or their hand or hands, to direct the seizure, or any part thereof, to be restored to the proprietor or proprietors or claimant or claimants thereof, whether such seizure shall or shall not be condemned at the time of such order, and to mitigate or remit any penalty, or any part thereof, either before or after judgment for any such penalty, in such manner and upon such terms and conditions as under the circumstances of the case shall appear to the lord high treasurer, or any three or more of the commissioners of the Treasury, to be reasonable, and as he or they shall think fit to direct by such order as aforesaid; and no person shall be entitled to the benefit of any such order, unless the terms and conditions therein contained shall be complied with; nor shall any person accepting such terms and conditions be entitled to maintain any action or suit for any recompence or damages on account of any such seizure, or the detention thereof."

(a) See 47 Geo. III. sess. 2, c. 30, s. 19; 54 Geo. III. c. 171. And see *Allee & others* v. *Backhouse*, 3 Mee. & Wels. 633.

(b) It was held, that it is not necessarily essential to an order of the commissioners of Customs, made under the 51st Geo. III. to restore goods seized, that any terms or conditions should be imposed on the proprietors by the order; (*In re Ship Maria*, 1 *Price*, 4); and the court will not refuse to stay proceedings on a writ of appraisement on that ground, although the application proceed from the Crown. But they will not quash the writ if regularly issued.

(13). *Capias, &c.*

(13). Writs of Capias, Arrest, Escape.

7 & 8 Geo. 4, c. 53.

Sheriff to grant warrant on a writ of capias indorsed by one of the solicitors of Excise (a).

By 7 & 8 Geo. IV. c. 53, s. 95. "That where any writ of capias or other writ or process authorizing or directing the arrest of any person or persons for or on account of any penalty or penalties by such person or persons incurred under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise or Customs, or for or on account of any duty of Excise, or any other matter or thing relating to the revenue of Excise, shall issue out of the Court of Exchequer in England, Scotland, or Ireland, directed to any sheriff, sheriff depute, mayor, bailiff, or other person having the execution of any such writ of capias, or other writ or process as aforesaid, in any county, shire, division, city, town, or place in any part of the United Kingdom, every such sheriff, sheriff depute, mayor, bailiff, and other person, and their and every of their under-sheriffs, deputies, and other persons acting for them in any of the said offices respectively, shall and they are hereby respectively enjoined and required, upon the request or application of any of the solicitors of Excise in England, Scotland, or Ireland, (such request to be in writing, and indorsed upon the back of such writ of capias or other writ or process as aforesaid, and signed by such solicitor with his name, and addition of solicitor of Excise), to grant a special warrant or warrants to such person or persons as shall be specified in such indorsement by such solicitor, for the apprehension of the person or persons named in such writ of capias, or other writ or process as aforesaid; and in default thereof every such sheriff, sheriff depute, mayor, bailiff, or other person, having execution in any such writ of capias, or other writ or process as aforesaid, and every under-sheriff, deputy, or other person acting for them in the said offices respectively, by or through whom the said default shall have been made, shall be subject and liable to such process of contempt, fine, amerciament, penalty, and forfeiture, as they or any of them are now by any law, custom, or usage, liable to in case of refusing or neglecting to execute the like writ of capias, or other writ or process, in the common and usual method of proceeding thereon."

Sheriffs indemnified from escapes in cases where the warrant is granted at request of the solicitor of Excise.

Sect. 96. "That all and every such sheriff, sheriff depute, mayor, bailiff, under-sheriff, deputy, and other person so granting such special warrant as aforesaid, shall be and they are hereby respectively saved harmless and indemnified against his Majesty, his heirs and successors, and against all and every other person or persons whomsoever, for or on account of any escape of any person or persons who shall or may be taken by virtue of any such warrant as aforesaid, which shall happen between the time of taking such person or persons, and the time of such person or persons being committed to proper gaol or prison, or offered and tendered to the gaol-keeper or other person having charge of such gaol or prison (who is hereby enjoined and required to receive every such person or persons so apprehended as aforesaid, and to give a receipt for the body or bodies of such person or persons), and of and from all actions, prosecutions, processes of contempt, and other proceedings for or on account of any such escape; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

Allowances to Excise prisoners.

Sect. 113. "That for the necessary subsistence of any poor person who shall be confined under or by virtue of any Exchequer process for the recovery of any duties or penalties under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, or who shall be confined under or by virtue of any warrant granted by the commissioners of Excise, or any justices of the peace within the

(a) An action against an officer for acting under such a warrant may be removed from the Court of Common Pleas into Exchequer. (*Siddon* v. *East*, 1 *Cromp. & Jerv.* 12; *Attorney-General* v. *Kingston*, 8 Mee. & Wels. 163.

(13). *Capias, &c.*

7 & 8 Geo. 4, c. 53.

United Kingdom under or by virtue of this act, or the said other acts, or any of them, or who shall be confined under or by virtue of any writ of extent for the recovery of any debt due to his Majesty, prosecuted under or by virtue of any order of the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, it shall be lawful for the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, to cause, at their discretion, an allowance not exceeding the sum of eightpence per day to be made to such poor person out of any money in their hands respectively arising from the revenue of Excise."

(14). *Selling forfeited property, &c.*

Forfeitures after condemnation shall be sold publicly to the best bidder.

(14). Selling or Destroying Forfeited Property, Paying Expenses, Distribution of Penalties and Forfeitures.

By 7 & 8 Geo. IV. c. 53, s. 100. "That all goods, commodities, and chattels whatsoever, seized as forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, shall after the same shall have been condemned (such cases only excepted for which other directions shall in any act or acts of Parliament relating to the revenue of Excise be specially given) be publicly sold to the best bidder, at such time and place, and in such manner, as the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, shall order and direct, under and subject to all such rules, regulations, and provisions as by this act, or any other act or acts of Parliament, are in that behalf made and directed."

No goods to be sold for home consumption at less price than amount of the duties.

If such price not offered, goods to be destroyed, or sold for exportation, or otherwise disposed of.

Sect. 101. "That no goods or commodities of a sort or kind subject to any duty of Excise or Customs, and for or in respect of which every such duty shall not have been paid, which shall be ordered or directed to be sold by the commissioners of Excise, or by the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, under this act, or any other act or acts of Parliament relating to the revenue of Excise, or the sale of which shall be directed under any other act or acts of Parliament, shall be sold for home consumption at a less price than shall be equal to the amount of the duty and duties aforesaid which shall not have been paid; and that all such goods and commodities for which, on any sale so ordered or directed, a price shall not be offered equal at the least to the amount of such duty and duties, and all condemned goods and commodities, the importation whereof is or shall be wholly prohibited, shall be forthwith destroyed, or shall be sold for exportation, or applied and disposed of to such public use as shall be ordered by the lord high treasurer, or any three or more of the commissioners of the Treasury."

Expenses attending forfeitures to be paid out of gross proceeds of sale thereof; or, if not sold, out of revenue.

Sect. 102. "That all costs and expenses attending the seizure, detention, custody, removal, prosecution, condemnation, and sale of any goods, commodities, or chattels whatsoever, forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, shall (such cases only excepted for which other directions shall in any act or acts of Parliament relating to the revenue of Excise be specially given) be paid out of the gross proceeds arising from the sale thereof respectively, whenever the same shall be sold; and in case the same shall not be sold, but shall be destroyed or otherwise disposed of, all such costs and expenses shall be paid out of the revenue of Excise."

Penalties and forfeitures to be distributed equally between his Majesty and the informer.

Sect. 103. "That all penalties and forfeitures incurred and recovered under or by virtue of this act or any other act or acts of Parliament relating to the revenue of Excise (such cases only excepted for which other directions shall in any act or acts of Parliament relating to the revenue of Excise be specially given) shall, after deduction therefrom of all costs and expenses relating thereto incurred, be distributed, one moiety thereof to the use of his Majesty, his heirs and successors, and

the other moiety to the officer or officers of Excise, or the person or persons who shall discover, inform, or sue for the same."

(14). *Selling forfeited property, &c.*

7 & 8 Geo. 4, c. 53.

On proof of officer acting collusively in making seizures, commissioners of Excise may direct his share to be forfeited.

Sect. 104. "Provided always, that upon proof being made to the satisfaction of the commissioners of Excise, or of the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, that any officer or other person to whom any part or share of any penalty or forfeiture, or any reward, shall be given or payable by any act or acts of Parliament relating to the revenue of Excise or Customs, has acted collusively or negligently, either in making any seizure, or in the wilful omission or failure to make any seizure, or to discover any fraud, or to arrest or make known any offender against any act or acts of Parliament relating to the revenue of Excise or Customs, in the particular case in or for which such part or share of any penalty or forfeiture, or such reward, is given or payable; it shall be lawful for the said commissioners of Excise, or commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, in such case to direct that the whole or any part of such part or share of any penalty or forfeiture, or of such reward which might and otherwise would have been given or payable to such officer or other person, shall be forfeited, and shall go and be applied in such manner as his Majesty's share of such penalty or forfeiture is by law at such time directed to be applied."

In Exchequer prosecutions expenses may be paid, by direction of Treasury, out of revenue of Excise, and officers allowed their moiety.

Sect. 105. "That in any prosecution for any penalty incurred under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, and carried on in his Majesty's court of Exchequer in England, Scotland, or Ireland, it shall be lawful for the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, under the direction of the lord high treasurer, or any three or more of the commissioners of the Treasury, to order the whole or any part of the costs and expenses of such prosecution, whether the money which shall be recovered or received from the defendant or defendants, either by way of penalty or compromise, shall be sufficient to satisfy and discharge such costs and expenses or not, to be paid out of the revenue of Excise, and to allow out of such revenue to the officer or officers concerned in such prosecution, or person or persons through whose information or by whose means or assistance the offence or offences shall have been detected, any sum or sums of money, not exceeding a moiety of the sum or sums of money which shall be so recovered or received as aforesaid; any law, custom, or usage to the contrary thereof in anywise notwithstanding."

In prosecutions for seizures expenses may be paid out of revenue of Excise.

Sect. 106. "That in any prosecution carried on in his Majesty's court of Exchequer in England, Scotland, or Ireland, for the condemnation of any goods, commodities, or chattels seized as forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, it shall be lawful for the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, under the direction of the commissioners of the Treasury, or any three of them, to order the whole or any part of the costs and expenses attending the seizure, detention, custody, removal, or prosecution of any such goods, commodities, or chattels, whether the same be condemned or not, and also of the costs and expenses attending the condemnation thereof, if the same be condemned, and of the sale thereof if sold, whether the produce arising from the sale thereof shall be sufficient to answer the said costs and expenses or not, to be paid out of the revenue of Excise; and to distribute to and amongst the officers and persons who shall have made any such seizure, or by whose information or through whose means or assistance such seizure shall have been made, a sum or sums of money not exceeding the part, share, or proportion of such seizure, or the value thereof, in case the same shall have been sold, or if not sold, but de-

Officer's or informer's share of proceeds of sale, &c. to be paid, without deducting expenses.

(14). *Selling forfeited property, &c.*

stroyed, or otherwise applied or disposed of as aforesaid, such sum of money or reward for making such seizure as shall be by law directed to be paid in such behalf respectively as aforesaid, in full, without deducting therefrom the said costs and expenses, or any part thereof."

7 & 8 Geo. 4, c. 53. Officers of Customs to give notice of seizure of exciseable goods.

Sect. 107. "That all officers of the Customs who shall make any seizure under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, of any exciseable goods or commodities, shall forthwith give notice of such seizure at the next office of Excise, or to the supervisor or other officer of Excise of the district where such seizure shall have been made; and such supervisor or other officer of Excise shall, on such notice, take a particular account of the species and quantities of all such goods and commodities so seized respectively; and the same or any part thereof shall not afterwards be removed without a permit (where a permit is, for the removal of goods or commodities of a similar quantity, sort, or kind, required under any act or acts of Parliament relating to the revenue of Excise), signed by the proper officer of Excise of the place or district from whence the same shall be intended to be removed, on pain of forfeiture thereof for such removal."

His Majesty's share of penalties to be accounted for as directed by Treasury.

Sect. 112. "That the commissioners of Excise, and the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, shall, and they are hereby respectively authorized and required to keep a separate and distinct account of the surplus (after deduction of all costs and expenses) of the money received on behalf of his Majesty from any penalties and forfeitures incurred under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, and to account for the same in such manner as the lord high treasurer, or any three or more of the commissioners of the Treasury, shall direct: Provided always, that nothing in this act contained shall be deemed or construed to extend to affect or alter the hereditary revenue of his Majesty, his heirs and successors, in Scotland, or other revenues there granted to his late Majesty King George the Second during his life, and reserved to his present Majesty during his life by an act made in the first year of his present Majesty's reign, but the same shall continue to be paid over in like manner as heretofore; any thing in this act contained to the contrary notwithstanding."

Nothing herein to affect hereditary revenue in Scotland.

Goods condemned for being adulterated or mixed to be destroyed (a).

The 4 & 5 Will. IV. c. 51, s. 13, enacts, that goods condemned for being adulterated, or mixed with any prohibited ingredient, shall be effectually *destroyed*, not sold, see *ante*, p. 672.

And, by sect. 14, gives power to *reward* officers detecting private manufactories, *ante*, p. 673.

4 Vict. c. 20. Seizures under 15*l.* value, unless claimed in one month, to be condemned.

The 4 Vict. c. 20, s. 32, enacts, "That all goods, commodities, chattels, and things, not exceeding fifteen pounds in value, which shall be seized as forfeited under the provisions of any act or acts relating to the revenue of Excise, and which shall not within the space of one month after the seizure thereof be claimed by the owner, by application in writing either to the commissioners or the collector or supervisor of Excise, or to the officers seizing, or in whose custody the goods, commodities, chattels, or things seized shall be, shall be absolutely forfeited, as fully and effectually as if the same had been condemned by judgment of condemnation of her Majesty's Court of Exchequer; and in all cases in which any such goods, commodities, chattels, or things seized shall be claimed by any person within such time as aforesaid, such proceedings shall be had for the condemnation thereof as in the case of other goods, commodities, or chattels, or things seized as forfeited under any law or laws of Excise: Provided always, that nothing herein contained shall extend or be construed to extend to restrict or affect the

(a) When foreign goods have been imported contrary to the law of nations or treaty, then there may be good ground for ordering their *destruction*; but otherwise, why should their value or utility be utterly wasted by destruction?

forfeiture of any goods, commodities, chattels, or things seized under the provisions of an act passed in the second year of the reign of his late Majesty King William the Fourth, to consolidate and amend the laws for suppressing the illicit making of malt, and distillation of spirits in Ireland."

(14). *Selling forfeited property, &c.*

7 & 8 Geo. 4, c. 53.

(15). PROTECTION OF OFFICERS, NOTICE OF ACTIONS, LIMITATIONS, PLEA, COSTS, FORGERY, &c.

(15). *Protection of officers, &c.*

By the 7 & 8 Geo. IV. c. 53, s. 114, "That no writ, summons, or process shall be sued out against or served upon, nor shall any action be brought, raised, or prosecuted against any officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid and assistance of any such officer or person so employed as aforesaid, for anything done in pursuance of this act, or any other act or acts of Parliament relating to the revenue of Excise, until after the expiration of one calendar month next after notice in writing shall have been delivered to such officer or person as aforesaid, or left at the usual place of his abode, by the attorney or agent for the person or persons who shall intend to sue out such writ or process, or to bring, raise, or prosecute such action as aforesaid; in which notice shall be clearly and explicitly contained and set forth the cause of such action, the time when and the place where such cause of action arose, the name and place of abode of the person or persons in whose name or names such action or suit is intended to be brought, and the name and place of abode of the said attorney or agent; and that a fee of twenty shillings, and no more, shall be paid for the preparing and serving of every such notice."

Protection of officers, &c (a). No action without a month's notice, expressing names and places of abode of plaintiff and his attorney (b).

Sect. 115. "That if any action or suit shall be brought, raised, or commenced against any officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, for any thing done in pursuance of this act, or any other act or acts of Parliament relating to the revenue of Excise, such action or suit shall be commenced within the space of *three calendar months* next after the cause of action shall have arisen, and shall be laid and prosecuted in the proper county or place wherein the same arose: and the defendant or defendants in any such action or suit may plead the general issue, and give this act and the special matter in evidence thereunder at any trial to be had thereupon; and if afterwards a verdict shall pass * the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited, or shall discontinue such action or suit, or if judgment shall be given against such plaintiff or plaintiffs upon demurrer or otherwise, then and in every such case such defendant or defendants shall have treble costs awarded to him or them against such plaintiff or plaintiffs."

Limitation of action against officers.

Venue.

General issue.

* *Sic* in the statute —the word "for" omitted.

Treble costs.

Sect. 116. "That it shall be lawful to and for any officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, to whom such notice shall be given as aforesaid, at any time within one calendar month next after such notice shall have been given, to tender amends to the person or persons in whose name or names such action or suit shall be brought, raised, or commenced, or to the agent or attorney of such person or persons; and in case such amends shall not be accepted, it shall be lawful for any such officer or person to plead such tender in bar to such action or suit, together with the plea of not guilty, and any other plea or pleas, with leave of the court in which such action or suit shall be brought; and if upon issue joined thereon the jury shall find the amends so tendered to have been sufficient, they

Tender of amends may be made within one month after notice given, and pleaded in bar if not accepted.

(a) See 23 Geo. III. c. 70; 3 *T. R.* 623; 5 *T. R.* 1; 2 *Smith, R.* 220.

(b) See 28 Geo. III. c. 37, ss. 23 to 28, and cases, *Chitty's Stat. Vol. I.* 262; *Tidd*, 9th ed. 20. As the 28 Geo. III. c. 37, is not repealed by subsequent acts, three *lunar* months is the limit. *Tidd*, 20.

(15). *Protection of officers, &c.*

7 & 8 Geo. 4, c. 53.

In case of non-suit, &c. costs may be awarded.

If verdict for plaintiff, damages and costs may be given.

shall give a verdict for the defendant or defendants; and in such case, or in case the plaintiff or plaintiffs shall be nonsuited, or shall discontinue such action or suit, or in case judgment shall be given against such plaintiff or plaintiffs upon demurrer or otherwise, then and in every such case the same costs shall be awarded to such defendant or defendants as if the general issue only had been pleaded, and if, upon issue so joined, the jury shall find that no amends were tendered, or that the same were not sufficient, and also against the defendant or defendants, on such other plea or pleas as aforesaid, such jury shall give a verdict for such plaintiff or plaintiffs, with such damages as they shall think proper, together with costs of suit."

Defendant may pay money into court before issue joined (a).

Sect. 117. "That in case any such officer of Excise, or any person employed in the revenue of Excise, or any person acting in the aid and assistance of such officer or person so employed as aforesaid, shall neglect to tender amends, or shall have tendered insufficient amends before action or suit brought, raised, or commenced, it shall be lawful for the defendant or defendants, by leave of the court in which such action or suit shall be brought, raised, or commenced, at any time before issue joined, to pay into court such sum of money as such defendant or defendants shall think fit, whereupon such proceedings, orders, and judgments shall be had, made, and given in and by such court, as in other actions where the defendant is allowed to pay money into court."

No evidence to be given of a cause of action not expressed in notice.

Sect. 118. "Provided always, that no such plaintiff or plaintiffs shall, on the trial of any such action or suit, be permitted to produce any evidence of any cause of action, except such as shall be contained and set forth in such notice as aforesaid; nor shall recover any verdict against any such officer or person as aforesaid, unless it shall be proved on the trial of such action or suit that such notice was given; and the defendant or defendants in such action or suit shall in default of such proof recover a verdict with such costs as aforesaid."

On trial for seizure, if judge shall certify probable cause of seizure, officer shall not be liable to action.

Sect. 119. "That in case any information shall be commenced and brought to trial or hearing for the condemnation of any goods, commodities, or chattels, seized as forfeited under or by virtue of this act, or any other act or acts of Parliament relating to the revenue of Excise, wherein a verdict or decision shall be given or made for the claimant or claimants thereof, and it shall appear to the judge or court before whom the same shall be tried or heard that there was a probable cause of seizure, such judge or court shall certify upon the record or other written proceedings on such information, that there was a probable cause for making such seizure; and in such case the officer of Excise, or person who made or assisted in making such seizure, shall not be liable to any action, indictment, or other suit or prosecution on account of such seizure, or of the detention of any such goods, commodities, or chattels; and in case any action, indictment, or other suit or prosecution shall be brought to trial or hearing against any officer of Excise or person, on account of the seizing of any such goods, commodities, or chattels, or of the detention thereof (whether any information shall have been or shall be brought to trial or hearing for the condemnation of the same or not), and a verdict or sentence shall be given thereupon against the defendant or defendants therein, if the court or judge before whom such action, indictment, or other suit or prosecution shall be tried or heard, shall certify in like manner as aforesaid that there was probable cause for such seizure, then and in such case the plaintiff or plaintiffs therein, besides the goods, commodities, and chattels respectively so seized, or the value thereof, shall not be entitled to more than two-pence damages, nor to any costs of suit, and the defendant or defendants therein shall not be imprisoned, nor be fined more than one shilling thereon."

In actions against officers, if the judge shall certify, plaintiff shall not be entitled to more than 2d. damages.

Forging any instrument to obtain money from the

By 7 & 8 Geo. IV. c. 53, s. 56, "That if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or

(a) *Collins* v. *Morgans*, 1 *Hen. Bla.* 244.

shall knowingly and wilfully aid or assist in forging or counterfeiting, the name or handwriting of any receiver general of Excise, or of any Excise comptroller of the cash as aforesaid, or of any of the persons duly authorized as aforesaid, to any draft, instrument, or writing whatsoever, for or in order to the receiving or obtaining any of the money, bills, notes, drafts, checks, or orders for the payment of money, in the hands or custody of the governor and company of the Bank of England, on account of such receiver general as aforesaid, or if any person shall forge or counterfeit, or shall cause or procure to be forged or counterfeited, or shall knowingly and wilfully aid or assist in the forging or counterfeiting, of any draft, instrument, or writing, in the form of a draft, instrument, or writing made by any receiver general of Excise, or by any Excise comptroller of the cash as aforesaid, or by any person or persons authorized as aforesaid, or shall utter or publish any draft, instrument, or writing so forged or counterfeited, knowing the same to be forged or counterfeited, with an intention to defraud his Majesty, or any person whomsoever; every person so offending, and being thereof lawfully convicted, shall be and is hereby declared and adjudged to be guilty of felony, and shall suffer death as in cases of felony without benefit of clergy."—But now see 2 & 3 Will. IV. c. 123, and 3 & 4 Will. IV. c. 44, abolishing punishment of death in case of forgery.

(15). *Protection of officers, &c.*

7 & 8 Geo. 4, c. 53. Bank on account of the receiver general, felony without benefit of clergy (a).

(16). Offences against Act. Offenders removing, &c.

(16). *Offenders removing.*

Offenders removing out of the jurisdiction where they were convicted.

By stat. 32 Geo. III. c. 10, s. 1, "Where any person against whom any warrant of commitment in execution, commonly called a *body-warrant*, shall, by any three commissioners of Excise, or by any justice, under any act relating to duties of Excise, be issued, shall escape, go into, reside, or be in any other county, riding, division, city, liberty, town, or place, out of the jurisdiction of the commissioners, &c. granting such warrant, any three commissioners or a justice of the peace where such person shall so be, on proof being made on oath of the handwriting of such commissioners or justice granting such warrant, may indorse the same, which shall be a sufficient authority to the person bringing such warrant, and to all other persons to whom such warrant was originally directed, to execute the same within such jurisdiction, and to convey such offender before the commissioners or justice who indorsed the same, or some other justice of the county, &c. where such warrant was indorsed, who may, by indorsement upon such warrant, commit such offender to the common gaol or house of correction of the county, riding, or place where such warrant shall be executed, according to the exigency of such warrant, there to remain until delivered by due course of law." (And see 7 & 8 Geo. IV. c. 53, s. 53, *ante*, p. 433.)

4 & 5 Will. 4, c. 53. Persons liable to arrest under laws of Excise, not being detained at the time, may be afterwards arrested.

The 4 & 5 Will. IV. c. 53, s. 25, enacts, "That if any person liable to be arrested or detained under any act or acts relating to the revenue of Excise, shall not be detained at the time when he shall be discovered committing the offence for which he is so liable, or after detention shall make his escape, any officer of Excise may stop, arrest, and detain such person any time afterwards, and carry him before any justice or justices of the peace, to be dealt with as if detained at the time of committing the offence."

(17). Of Permits and Certificates.

(17). *Of permits and certificates.*

General regulations.

To prevent fraud, there are certain regulations relating to the *removal* of some commodities, requiring the party before removing them to obtain a *permit* or *certificate*. We will here consider only the *general*

(a) Forging debentures &c., 41 Geo. III. c. 91; 38 Geo. III. c. 54, s. 9; 52 Geo. III. c. 143, s. 10. And here as to permits, 23 Geo. III. c. 70, s. 80; 22 Geo. III. c. 68, s. 26; 2 Will. IV. c. 16, ss. 3, 13.

(17). *Of permits and certificates.*

clauses and regulations. The *particular* regulations for the removal of *particular* commodities, with the decisions thereon, will be found under those particular heads.

Mandamus lies to issue permit.

If upon a regular application for a permit, it be refused, the court of King's Bench may be moved for a mandamus. (2 *Term Rep.* 381).

2 Will. 4, c. 16, consolidating act as to permits.

The 2 Will. IV. c. 16, intituled "*An Act to consolidate and amend the laws regulating the granting and issuing of permits for the removal of goods under the laws of Excise,*" and passed 24th March, 1832, after reciting that "whereas by certain acts relating to the revenues of Excise it is provided that certain commodities shall not be removed from any one place to any other place without a permit to accompany the same; and it is further provided that all such permits shall be granted and issued, obtained and used, under the rules, regulations, and provisions of the acts in force for regulating the granting and issuing of permits: and whereas the laws in force in Great Britain and the laws in force in Ireland, relating generally to the granting and issuing of permits for the removal and protection of goods and commodities for the removal of which a permit is by the laws of Excise required, contain different provisions and regulations, under which separate, distinct, and different forms of permits are required in Ireland from the form of permits in use in Great Britain: and whereas it is expedient that the provisions of the said laws should be uniform, and should be consolidated and amended;" therefore enacts, "that all permits to be granted for the removal or conveyance of any commodities, for the removal of which a permit is or shall be required by any act or acts now in force or hereafter to be passed relating to the Excise, shall be made and granted under the powers and directions of this act."

Permits to be made and granted according to the provisions of this act.

Commissioners of Excise to provide moulds for making paper to be used for, and plates and types for printing, permits.

Sect. 2. "That the commissioners of Excise shall cause to be provided moulds or frames for the making of paper to be used in Great Britain and Ireland for permits, which paper shall have the words 'Excise Office,' with any other letters, figures, marks, or devices which the said commissioners shall direct, visible in the substance of such paper, and shall also cause to be provided plates engraved with such marks, stamps, and devices as to them shall seem meet, and from time to time may alter or vary any such plates, and may also cause to be provided types cast in any particular form for the printing, stamping, and marking the said paper: and all permits given by the respective officers of Excise in the United Kingdom for the removal or conveyance of any commodity for the removal of which a permit is by law required shall be printed, stamped, and marked by the said plate or plates or types on paper so made as aforesaid; which said paper shall be made and the said plates engraven and types cast by such person or persons as shall be for that purpose from time to time authorized and appointed by the commissioners of Excise under their hands and seals; and as well the said paper as the said plates so engraven and types so cast shall be kept by such officer or officers or other person as shall from time to time be appointed by the said commissioners for keeping the same; and no permit shall be printed, stamped, marked, or written, nor shall any permit be granted, in any part of the United Kingdom, by any officer of Excise, but on paper so provided as aforesaid."

Unauthorised persons making paper in imitation of Excise paper, and persons forging or counterfeiting plates or types, to be deemed guilty of felony, and subject to transportation.

Sect. 3. "That every person who shall make, or cause or procure to be made, or shall aid or assist in the making, or shall knowingly have in his, her, or their custody or possession, not being authorized by the said commissioners, and without lawful excuse, the proof whereof shall lie on the person accused, any mould or frame or other instrument having therein the words 'Excise Office,' or any other words, figures, marks, or devices peculiar to and appearing in the substance of the paper used by the said commissioners for permits, or with any or part of such words, figures, marks, or devices, or any of them, intended to imitate or pass for the same; and every person, except as before ex-

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2 Will. 4, c. 16.

cepted, who shall make, or cause or procure to be made, or aid or assist in the making, any paper in the substance of which the words 'Excise Office,' or any other words, figures, marks, or devices peculiar to or appearing in the substance of the paper used by the commissioners of Excise for permits, or any part of such words, figures, marks, or devices, or any of them, intended to imitate and pass for the same, shall be visible; and every person, except as before excepted, who shall knowingly have in his, her, or their custody or possession, without lawful excuse, (the proof whereof shall lie on the person accused), any paper whatever in the substance of which the words 'Excise Office,' or any other words, figures, marks, or devices peculiar to and appearing in the substance of paper used by the commissioners of Excise for permits, or any part of such words, figures, marks, or devices, or of any of them, intended to imitate and pass for the same, shall be visible; and every person, except as before excepted, who shall, by any art, mystery, or contrivance, cause or procure, or aid or assist in causing or procuring, the words 'Excise Office,' or any other words, figures, marks, or devices peculiar to and appearing in the substance of the paper used by the commissioners of Excise for permits, or any or part of such words, figures, marks, or devices, or any of them, intended to imitate and pass for the same, to appear visible in the substance of any paper whatever; and every person, not authorized or appointed as aforesaid, who shall engrave, cast, cut, or make, or cause or procure to be engraven, cast, cut, or made, or aid or assist in engraving, casting, cutting, or making, any plate, type, or other thing in imitation of or to resemble any plate or type made or used by the direction of the commissioners of Excise for the purpose of marking or printing the paper to be used for permits; and every person, except as before excepted, who shall knowingly have in his or her custody or possession, without lawful excuse, proof whereof shall lie on the person accused, any such plate or type; shall for every such offence be adjudged a felon, and shall be transported for the term of seven years, or shall be imprisoned, at the discretion of the court before whom such person shall be tried, for any period not less than two years."

Forging or counterfeiting permits, or uttering forged or counterfeited permits, felony.

Sect. 4. "That every person who shall counterfeit or forge, or cause or procure to be counterfeited or forged, or assist in counterfeiting or forging, any permit or any part of any permit, or shall counterfeit any impression, stamp, or mark, figure or device, provided or appointed or to be provided or appointed by the commissioners of Excise to be put on such permit, or shall utter, give, or make use of any counterfeited or forged permit, knowing the same or any part thereof to be counterfeited or forged, or shall utter, give, or make use of any permit with any such counterfeited impression, stamp or mark, figure or device, knowing the same to be counterfeited; or if any person or persons shall knowingly or willingly accept or receive any counterfeited or forged permit, or any permit with any such counterfeited impression, stamp or mark, figure or device thereon, knowing the same to be counterfeited; shall for every such offence be adjudged guilty of a misdemeanor, and shall be transported for the term of seven years, or fined and imprisoned, at the discretion of the court."

A request note to be produced for obtaining a permit.

Sect. 5. "That no permit shall be granted by any officer of Excise until a request note or requisition in writing shall have been delivered by or in behalf of the person requiring such permit; and every permit which shall be granted, without a request note or requisition being delivered in manner required by this act, shall be actually void, and shall not protect any goods, wares, or merchandize mentioned in such permit."

Request note to contain certain particulars.

Sect. 6. "That every request note for any permit shall contain the date thereof, and the name of the place from which and the place to which the commodities therein mentioned are to be carried, and the mode of conveyance by which such commodities are to be removed, and

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2 Will. 4, c. 16.

shall likewise contain the real name and surname and place of abode of the person or persons sending such commodities, and of the person to whom they are to be sent, and, in case of a company, or copartnership, the name of the firm, company, or copartnership, together with such other particulars as the commissioners of Excise shall from time to time direct or appoint, or as shall be required by any act or acts relating to the commodities in respect of which the permit shall be required; and every such request note shall be signed by the person requiring the permit, or by his or her known clerk or servant; and no permit shall be granted on any request note which shall not be so signed, and contain the several particulars aforesaid: Provided always, that no such request note or requisition shall be liable to any stamp duty thereon."

Permits to be in such form as commissioners of Excise shall direct.

Sect. 7. "That every permit to be granted for the removal of any commodities shall be made out in conformity with the request note; and every such permit shall be in such form, and shall be marked, stamped, and printed with such stamps, marks, figures, and devices, and shall contain such particulars, as the commissioners of Excise shall direct."

Permit to limit time for which it is to be in force.

Sect. 8. "That every officer of Excise empowered to grant permits shall express and limit in every permit granted by him, as well the time during which such permit shall be in force for removing the commodities for which the permit shall be obtained from and out of the stock of the person taking out such permit, as also the time within which the same commodities shall be delivered and actually received into the stock of the person or persons to whom the same shall be so permitted to be sent; and every permit which shall not be actually used, as directed by this act, within the time expressed and limited in such permit, shall within the said time be returned and re-delivered by the person who shall have obtained the same to the proper officer of Excise; and if any permit shall not be so returned as aforesaid, and upon taking an account, by any officer or officers of Excise, of the stock remaining in the hands or custody of the person or persons from or out of whose stock the commodities mentioned in such permit were thereby authorized to be removed, there shall not appear a sufficient decrease to answer the removal of the commodities mentioned in such permit, then the person or persons from or out of whose stock the commodities mentioned in such permit were thereby authorized to be removed shall forfeit and lose the like quantity of commodities so permitted to be removed and not removed according to such permission, and the same may be seized by any officer of Excise; and in case any commodities specified in any permit shall be removed from the stock of the person taking out such permit, and the same shall not, within the time expressed and limited in such permit, be actually delivered and received into the stock of the person or persons to whom the same are mentioned in such permit to be sent, then and in every such case all such commodities so removed as aforesaid shall be deemed to be goods removed or removing without permit, and shall be forfeited and seized accordingly."

Goods seized may be restored in certain cases.

Sect. 9 provides and enacts, "that in case any goods or commodities shall, by any unavoidable accident or necessity, be delayed, and thereby be prevented from being delivered into the stock or stocks of the persons to whom such goods shall be sent within the time limited and expressed in the permit, that then and in every such case the court of jurisdiction where any information shall be brought for the condemnation of any such seizure shall, upon proof of such unavoidable accident or necessity, direct the goods or commodities so seized to be restored to the owner or claimer thereof, anything hereinbefore contained to the contrary notwithstanding."

Penalty on sending out, &c. goods without permit.

Sect. 10. "That every person who shall remove, deliver, or send out, or cause or suffer to be removed, delivered, or sent out, from his stock, custody, or possession, any commodities for the removal whereof a permit is or shall be required, without a proper permit accompanying the

same, or who having obtained a permit shall not send out therewith the commodities therein described, or return and redeliver the said permit to the proper officer of Excise within the time hereinbefore required, and every person who shall take or receive or suffer to be taken or received into, or shall have in his, her, or their stock, custody, or possession any commodities for the removal whereof a permit is required, without a proper permit accompanying or having accompanied the same, shall forfeit for every such offence two hundred pounds."

(17). *Of permits and certificates.*

2 Will. 4, c. 16.

All goods removed without permit to be forfeited, and the person removing them to forfeit 200*l.*

Sect. 11. "That all commodities for the removal whereof a permit is required, which shall be or shall have been delivered, removed, or sent out, or which shall be found removing, carrying, or conveying, or which shall be received, without a proper permit accompanying the same, shall be forfeited, and may be seized by any officer of Excise; and every carrier, master of vessel, boatman, and other person who shall be found or shall knowingly have been employed or engaged in, or shall knowingly aid or assist or have aided or assisted in delivering, removing, carrying, or conveying any such commodities without a proper permit accompanying the same, shall forfeit two hundred pounds."

permit not delivered with goods, the price to be forfeited.

Sect. 12. "That in any action or suit, at law or in equity, on any bond, bill, note, or other security, contract, agreement, promise, or undertaking, where the whole or any part of the consideration thereof shall be for the value or price of any commodities for the removal of which a permit is or shall be required, and for and with which a proper permit shall not have been given, the defendant in such action or suit may plead and give in evidence that such commodities were delivered without a permit accompanying them; and if the jury shall find that such goods were delivered without a true and lawful permit having been obtained for the removal thereof, they shall find a verdict for the defendant; and if such commodities shall have been sold for ready money, or if the person selling the same shall otherwise have been paid or satisfied for the value or price thereof, it shall be lawful for the person who shall have paid or satisfied such value or price, within twelve calendar months after payment or satisfaction made, to recover back from the seller of such commodities the amount of the value or price of such commodities, to be sued for and recovered by action of debt or on the case in any of his Majesty's courts of record."

Penalty on forging or counterfeiting request notes, or fraudulently procuring permits, or misapplying or misusing them, 500*l.*

Sect. 13. "That every person who shall forge or counterfeit any request note for a permit, or shall forge or counterfeit or make use of the name of any trader entitled to obtain permits, for the purpose of falsely and fraudulently obtaining a permit, or shall utter or produce any forged, false, or untrue request note to any officer of Excise, for the purpose of falsely and fraudulently obtaining a permit; and every person who shall insert in any request note the name of, or shall obtain a permit to, any fictitious person, as the person to whom the goods or commodities mentioned in such request note or permit are to be sent; and every person who shall fraudulently alter, erase, or obliterate any permit, or any part thereof, after the same shall have been granted by the proper officer of Excise, or shall knowingly or willingly give an altered, erased, obliterated, false, or untrue permit; and every person who shall knowingly or willingly accept or receive any altered, erased, obliterated, false, or untrue permit with or for any commodities; and every person who, having obtained a permit, shall remove or send or deliver, or cause or procure or suffer to be removed, sent, or delivered, the commodities specified in any such permit to any other person than the person to whom the said permit shall permit the said commodities to be sent, or shall remove or send with such permit any other commodities than the commodities specified and described therein and thereby permitted to be removed, or any greater or lesser quantity of such commodities; and every person who shall request, obtain, sell, lend, deliver, employ, or make use of any permit, or shall procure or suffer any permit to be requested, obtained, sold, lent, delivered, or employed or

(17). *Of permits and certificates.*

2 Will. 4, c. 16.

made use of, for any other use or purpose whatsoever than to accompany the actual removal and delivery of the commodities as therein expressed, or shall produce, or cause or suffer to be produced, any such permit to any officer of Excise as having been received with any commodities other than as aforesaid, or shall in any manner knowingly or willingly use or employ, or cause or suffer to be used or employed, any permit, so as that any account of any stock or of any commodities kept or checked or to be kept or checked by any officer of Excise by such permit, shall or may be frustrated or evaded; shall for every such offence severally forfeit the sum of five hundred pounds; and all commodities removing or removed with any such permit in any of the cases aforesaid shall be forfeited, and may be seized by any officer of Excise."

Where goods are forfeited, the casks, &c containing the same, and the conveyance used in the removal of them, also to be forfeited.

Sect. 14 "That where any commodities shall be forfeited and liable to be seized for being or having been sent, removed, carried, delivered, or received without a proper permit accompanying or having accompanied the same, or for any misuse of a permit, or breach of any regulation relating to permits, all casks, jars, bottles, and other vessels, cases, boxes, sacks, bags, and all and every package and covering whatsoever in which such goods shall be found, and every horse and other beast or cattle, and every carriage, waggon, cart, vessel, boat, or other conveyance, used or employed or which shall have been used or employed in carrying, removing, or conveying such goods and commodities, shall also be forfeited, and may be seized."

Punishment of officer delivering out false permits.

Sect. 15. "That every officer of Excise who shall deliver out or suffer to be delivered out any paper prepared or provided or appointed by the commissioners of Excise to be used for permits in blank, or before such permit shall be filled up and issued agreeable to and in conformity with a request note; and every officer who shall knowingly give or grant any permit to any person not entitled to receive the same, or shall knowingly give or grant any false or untrue permit, or shall make any false or untrue entry in the counterpart of any permit given or granted by him, or shall knowingly or willingly receive or take any goods or commodities into the stock of any person or persons brought in with any false or untrue or fraudulent permit, or shall knowingly or willingly grant any permit for the removal of any goods or commodities out of or from the stock of any person or persons who shall have received or retained such goods or commodities, or any of them, under or by virtue or pretext of any false, untrue, forged, or fraudulent permit, or shall knowingly or willingly give any false credit in the stock of any person or persons beyond the credit to which such stock is justly and truly entitled, so as to enable such person or persons falsely and fraudulently to obtain a permit or permits; or if any such officer shall knowingly or willingly suffer the same to be done directly or indirectly; every officer so offending in any of the cases aforesaid shall be guilty of a misdemeanor, and on conviction shall suffer such punishment by fine and imprisonment, or fine or imprisonment, as the court shall award; and every officer so convicted shall from thenceforth be incapable of holding any office or place in or relating to any of the revenues of the United Kingdom."

Regulations for private persons obtaining permits.

Sect. 16. "That where any person, not being a trader duly entered and licensed and under the survey of the Excise, shall have occasion to remove from any one part of the United Kingdom to any other part thereof any goods or commodities for the removal of which a permit is or shall be by any law or laws of Excise required, it shall be lawful for the officer authorized to grant permits in the place from whence such commodities are intended to be removed, on such person, or his, her, or their known servant or servants, declaring, to the satisfaction of the commissioners of Excise or of the collector or supervisor of Excise of the collection or district in which the place from whence such commodities are intended to be removed is situate, that all the duties for such commodities have, to the best of the knowledge and belief of the person proving the same, been fully paid, and in case such commodities are

intended to be sent in and delivered to any other person than the person requiring the permit, then on a further declaration that the said goods or commodities have not been sold, or disposed of to such other person, upon a request note sent and delivered to such officer so authorized to grant permits, to give and grant a permit or permits for the removal of such commodities."

(17). *Of permits and certificates.*

2 Will. 4, c. 16.

Sect. 17. "That if any such declaration made by any person for the purpose of obtaining a permit for the removal of any goods or commodities shall be false or untrue in any particular or respect, the person knowingly making the same shall forfeit one hundred pounds."

Penalty on false declaration.

Sect. 18. "That if any commodities for the removal of which a permit is or shall be required shall be seized for any breach or violation of any of the laws of Excise, such commodities shall be condemned and adjudged forfeited, notwithstanding that the claimant shall prove that a permit was produced when such commodities were removing and conveying, or that a permit was produced after such commodities were removed and received, unless the claimant shall also prove in such case that the commodities so seized are duty paid, or the sale of such commodities had by reason of or in consequence of a forfeiture and condemnation thereof, or that the same had been received with a true and lawful permit from the stock of the trader duly authorized to obtain a permit for such goods; and if on the trial of any information, action, suit, or other proceeding at law brought for the recovery of any penalty or the condemnation of any commodities, or against any officer of Excise for the seizure of any commodities, any question shall arise whether any commodities for the conveyance or protection of which any permit shall be produced or shall be alleged to have been obtained are the identical commodities described and specified in such permit, proof of such commodities being really and *bonâ fide* the commodities mentioned and specified in such permit shall lie upon the owner or claimer thereof, or the person from whom the same shall have been seized, as such owner or claimer or person shall be party to the suit either as defendant or plaintiff."

Goods to be condemned, notwithstanding permit, unless the duties have been paid.

Sect. 19. "That whenever on the trial of any information, suit, action, or other proceeding at law, it may be necessary to prove the issuing of any permit or the contents thereof, the counterpart of such permit, together with the request note, may in all cases be admitted as evidence and proof that such permit was granted and issued, and of the contents thereof, according to the purport of such counterpart and request note, without producing or requiring the production of the original permit; and it shall not be necessary to prove any order of the commissioners of Excise appointing or directing the form of any such permit or of any counterpart thereof respectively."

Counterpart of permit to be evidence.

Sect. 20. "That so much of 23 Geo. III. c. 70, and 59 Geo. III. c. 107, as relates to permits, and every provision in any act or acts relating to the Excise contained for regulating the general form and issuing of permits for the removal and conveyance of exciseable commodities, for which similar provision is in and by this act made, shall be and the same is and are hereby repealed."

Certain provisions in former acts repealed.

Sect. 21 provides and enacts, "that nothing in this act shall be construed to alter, repeal, or vary any act by which a permit is required for the removal or conveyance of any particular goods or commodities, or any enactments, provisions, regulations, or restrictions in any such act or acts contained relating to the manufacturers, dealers in, or retailers of such goods or commodities, or the survey or keeping the stocks thereof, or to the traders entitled to receive or obtain permits, or the number of permits to be taken out or obtained by such traders, or the quantities of goods or commodities for which and the restrictions and provisions under which permits are to be obtained, or to the delivery of permits to the officers of Excise by persons receiving the same, or the credits to which such persons shall be entitled

Provisions as to permits in acts regulating the particular trade not to be affected.

(17). *Of permits and certificates.*

2 Will. 4, c. 16.

in respect of permits; but all and every such act and acts relating to the particular trade or business in and to the particular goods and commodities for which a permit is or shall be required shall, together with all enactments, clauses, penalties, forfeitures, provisions, restrictions, and regulations therein, with all powers and authorities to any officer or officers to examine permits, or stop or examine and seize any goods or commodities for the removal whereof a permit is by any such act or acts required, or any persons removing such goods, shall remain in full force and effect."

PARTICULAR LAWS.

II. Of the particular Laws affecting particular Articles.

Before entering on a detailed account of the different duties, it will be proper to state, that, by the 3 Vict. c. 17, an additional duty of £5 per cent. was imposed, from and after the 15th May, 1840, upon the produce and amount of all duties of *Customs*, except upon spirits, corn, grain, meal, or flour, entered for home consumption from parts beyond the seas; and of *Excise*, except on the duties on horses let to hire, and on licences taken out by persons letting horses out to hire, and upon the produce and amount of duties on spirits made and distilled in the United Kingdom.

Additional draw backs.

By sect. 4, it is enacted, "That there shall be allowed and paid an additional allowance, drawback, and bounty of five pounds per centum upon any allowance, drawback, or bounty of Customs or Excise now due on all goods and commodities entitled to allowance, drawback, or bounty on the exportation or removal thereof to foreign parts or Ireland, which shall, on or after the fifteenth day of August, one thousand eight hundred and forty, be so exported or removed, and upon all timber used in the mines of tin, lead, or copper in the counties of Devon or Cornwall, or in Ireland, and on any goods, in respect of which allowances of the duties of Excise are now by law payable, made use of in the manufacture of other goods and commodities, after the said fifteenth day of August: Provided always, that where any of the said first-mentioned goods shall be so exported or removed before the said fifteenth day of August, and it shall be made to appear to the satisfaction of the commissioners of Customs or Excise respectively that the additional duty or charge of five pounds per centum by this act imposed has been charged on the goods and commodities so exported or removed, and if goods entitled to a drawback of Excise, the same having been packed at the makers thereof, it shall be lawful for the said commissioners respectively to allow and pay the said additional drawback or bounty in respect of such goods and commodities."

Duties, drawbacks, and allowances of Excise to be under management of commissioners of Excise, and to be collected and applied under laws of Excise.

Sect. 6. "That the said additional duty or charge of five pounds per centum on the produce or amount of the duties of Excise, and the said additional drawbacks and allowances, and the said additional duty of Excise on spirits, shall be under the management of the commissioners of Excise for the time being, and the same shall and may be respectively raised, levied, recovered, paid, and applied in such and the like manner, and in and by the same means, ways, or methods, by which the several and respective duties on the produce and amount of which the said additional duty or charge of five pounds per centum is hereby imposed, and the duties on spirits made or distilled in England, Scotland, and Ireland respectively are or may be charged, raised, levied, collected, recovered, paid, and applied; and all and every act or acts relating to the duties of Excise, and all and every fine, penalty, or forfeiture, of any nature or kind whatsoever, for any offence against or in breach of any act or acts for securing the duties of Excise or any of them, or for the regulation thereof, in force immediately before the passing of this act, and the several clauses, powers, and directions therein contained, shall and the same are respectively hereby directed and declared to extend to, and

shall be applied, practised, and put in execution (except where otherwise altered or declared by this act) for and in respect of the additional duties of Excise by this act imposed, in as full and ample manner as if all and every the said acts, clauses, provisions, powers, directions, fines, penalties, and forfeitures were repeated and re-enacted in this act."

2. *Particular laws, &c.*

Sect. 7. Reciting that, "Whereas contracts may have been made on or before the said fifteenth day of May one thousand eight hundred and forty, for goods or commodities or spirits on which the additional duties of Customs and Excise hereby imposed will attach, to be delivered on or after that day;" enacts, "That all and every person and persons who shall or may, on or before the said fifteenth day of May one thousand eight hundred and forty, have made or entered into any such contracts or agreements, shall and they are hereby respectively authorized and empowered, in the case of any such contracts and agreements, to add so much money as will be equivalent to the said additional duties respectively to the price of such goods or commodities or spirits, and shall be entitled by virtue of this act to be paid for the same accordingly."

Providing for contracts made before imposition of additional duties.

The particular laws affecting particular articles may be arranged as follows:—

Particular laws.

1. *Ale and Beer*, 715.
2. *Auctioneers*, 724.
3. *Bricks* (*a*), 737.
4. *Candles*, 743.
5. *Coffee, Tea, Chocolate, and Cocoa Nuts*, 744.
6. *Cyder, Perry, Mum, Metheglin, and Mead*, 753.
7. *Glass and Muriate of Potash*, 756, 786.
8. *Hops*, 792.
9. *Malt*, 803.
10. *Paper*, 841.
11. *Passage Vessels*, 862.
12. *Plate*, 864.
13. *Post-horses*, 869.
14. *Soap*, 889.
15. *Spirituous Liquors*, 910.
16. *Sugar*, 973.
17. *Sweets, or Made Wines*, 979.
18. *Tobacco and Snuff*, 979.
19. *Vinegar, Acetous Acid, and Verjuice*, 988.
20. *Wines*, 995.

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(1). Ale and Beer.

(1). *Ale and Beer.*

See tit. "*Alehouses*," *Vol. I.*, and "*Malt*" and "*Cyder*," *post.*

[56 Geo. III. c. 58; 1 & 2 Geo. IV. c. 22; 11 Geo. IV. & 1 Will IV. c. 51; *Ibid.* c. 64.]

It may be sufficient here to observe, that, by reference to *Vol. I., tit.* "*Alehouses*," and *Vol. II.*, "*Excise*," *tit.* "*Licences*," the law will be found fully stated, as to who are entitled to sell beer by retail and take out a licence; how a licence is to be obtained; the amount of duty to be paid for it, and how accounted for; how becoming void and forfeited; with the penalties incurred for infringements of the law, and the mode of enforcing such penalties, &c.

The particular duties, &c., upon the articles Ale and Beer, are now to be considered.

The 11 Geo. IV. & 1 Will. IV. c. 51, intituled "*An act to repeal certain of the duties on cyder in the United Kingdom, and on beer and ale in Great Britain, and to make other provisions in relation thereto*," (16 July, 1830), after reciting the 12 Car. II. c 24, the 5 & 6 Anne, c. 8, the 12 Car. II. c. 23, the 6 Geo. IV. c. 58, and the 6 Geo. IV. c. 37, enacts "That from and after the 10th day of October, 1830, all the rates and duties and drawbacks payable on cyder in the United Kingdom, and all the rates, duties, allowances, drawbacks, and bounties now payable on beer or ale brewed or made in Great Britain (except the said hereditary duties of Excise on cyder, beer, and ale granted to his said

11 Geo 4 & 1 Will. 4, c. 51.

Duties and drawbacks.

From 10th October, 1830, duties and drawbacks on cyder and beer, except hereditary duties, to cease

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(*a*) The Excise duties on tiles were repealed by the 3 & 4 Will. IV. c. 11.

(1). *Ale and Beer.*

11 Geo 4 & 1 Will. 4, c. 51.

During his Majesty's life hereditary duties on cyder and beer not to be collected (a).

Majesty King Charles the Second, and hereinafter more particularly specified) shall be repealed, cease and determine, and be no longer levied or collected, paid or payable."

Sect. 2. "That the hereditary duties on beer and ale and cyder brewed or made for sale in Great Britain, granted by the said first recited act to his said Majesty King Charles the Second, his heirs and successors, (that is to say) for and upon every barrel of beer or ale above 6*s.* the barrel, brewed by the common brewer or any other person or persons who doth or shall sell or tap out beer or ale publicly or privately, to be paid by the common brewer or by such other person or persons respectively, and so proportionably for a greater or lesser quantity, a duty of 1*s.* 3*d.*: for every barrel of 6*s.* beer or ale, or under, brewed by the common brewer or any other person or persons who doth or shall sell or tap out such beer or ale publicly or privately, to be paid by the said common brewer or such other person or persons respectively as aforesaid, and so proportionably for a greater or lesser quantity, 3*d.*: for all cyder and perry made and sold by retail, upon every hogshead, to be paid by the retailer thereof, and so proportionably for a greater or lesser measure, 1*s.* 3*d.*: shall from and after the said 10th day of October, 1830, cease to be collected and paid, and shall not, during the life of his present Majesty be levied, collected, or demanded, or be paid or payable; and the several acts, enactments, clauses, provisions, and regulations in the said recited act of the reign of his said Majesty King Charles the Second, or in any other act or acts contained for securing, levying, or collecting the duties on beer and ale and cyder, save and except the acts hereinafter continued in force, shall not, from and after the said 10th day of October, 1830, and during the life of his present Majesty, be enforced or executed, save and except for the purpose of recovering any duties incurred or charged before the said 10th day of October, 1830, or any arrears thereof, or any fine, penalty, or forfeiture for the breach of any of the said clauses, enactments, provisions, or regulations, committed previous to the said 10th day of October, 1830; but all such duties and arrears, penalties, fines, and forfeitures, shall and may be recovered, levied, enforced, and applied in the same manner, and by the same means, powers, and authorities, as if this act had not been passed."

nor laws for collecting and securing duties enforced.

The acts 56 Geo. III c. 58, and 1 & 2 Geo. IV. c. 22, continued in force, except so much as relates to certificates and increases in stock (b).

Sect. 3. "Provided always, that an act passed in the fifty-sixth year of the reign of his late Majesty King George the Third, intituled *An act to repeal an act made in the fifty-first year of his present Majesty, for allowing the manufacture and use of a liquor prepared from sugar for colouring porter*, and an act passed in the first and second years of the reign of his late Majesty King George the Fourth, intituled *An act for securing the payment of the duties on ale and beer brewed in Great Britain*, except so much thereof as relates to certificates and increases in stock, shall be and remain in full force and effect; and all brewers of beer or ale for sale, and all and every person who shall be licensed under any act as a brewer, dealer in, or retailer of beer, shall continue subject to the provisions, enactments, and regulations in the said last-mentioned acts contained; and the said provisions, enactments, and regulations shall continue to be respectively executed and put in force by the commissioners and officers of Excise in Great Britain, as fully and effectually as if this act had not been passed."

Sect. 4. That on the demise of his present Majesty, the hereditary duties on cyder and beer shall revive and be collected (c).

Sect. 5. That in lieu of the hereditary duties on cyder and beer, the

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(a) Since her present Majesty's accession, no steps have been taken for enforcing the collection of these duties. (Letter of the Board, 21st June, 1837).

(b) See *post*, p. 723, note (a), for so much of these two acts as are not repealed.

(c) See *note* to section 2.

sums of 348,000*l.* in England, and 6,500*l.* in Scotland, to be annually paid to his Majesty.

(1). *Ale and Beer.*

11 Geo 4 & 1 Will. 4, c. 51.

Sect. 6. The sums to be paid by quarterly payments, and subjected to the same charges as the hereditary duties on cyder and beer were subject to.

After 10th October, 1830, brewers to pay their licence duty in proportion to the quantity of malt which they shall use in brewing.

Sect. 7. "And whereas the duty imposed by law on every licence to be taken out by any brewer or brewers of beer for sale is rated according to the quantity of beer brewed by the person or persons taking out the licence: and whereas, when the duties on beer shall cease to be collected in Great Britain, no account will be taken by the officers of Excise of the quantity of beer brewed for sale, but of the malt only used and employed by every brewer or brewers for that purpose; be it therefore enacted, that all and every brewer and brewers of beer for sale in Great Britain and Ireland shall, for the purpose of fixing and regulating the rate and amount of duty to be paid by such brewer or brewers for the licence to be taken out by him, her, or them, under an act passed in the sixth year of his late Majesty's reign, intituled *An act to repeal several duties on Excise licences in Great Britain and Ireland, and to impose other duties in lieu thereof, and to amend the laws for granting Excise licences*, be deemed to have brewed one barrel of beer for every two bushels of malt used or employed by such brewer or brewers in brewing; and shall for every licence to be taken out by him, her, or them, for brewing beer for sale, pay such amount of duty, according to the rate by the said act imposed on brewers of other than table-beer, as shall be correspondent to the quantity of beer which he, she, or they shall be deemed to have brewed as aforesaid."

Bond not to be required of brewers on taking out licence.

Sect. 8. "That it shall and may be lawful for any person or persons in Great Britain or Ireland to take out a licence to brew beer for sale under the provisions of the said recited act of the sixth year of his late Majesty's reign, without giving or being required to give any bond or other security as a brewer or brewers of beer; any thing in the said recited act or any other act to the contrary notwithstanding."

Drawback of 5*s.* on every barrel of beer exported.

Sect. 9. "That from and after the said 10th day of October, 1830, there shall be granted and paid for and upon every barrel of thirty-six gallons, and so on in proportion for any greater quantity of beer brewed or made by any entered brewer of beer for sale in the United Kingdom, and which shall be duly exported from any part of the United Kingdom to foreign parts as merchandise, a drawback of 5*s.*

Shipping notice to be given on exporting beer.

Sect. 10. "That it shall and may be lawful for any person or persons to export and ship as merchandise, from any port in the United Kingdom to foreign parts, any beer or ale brewed or made by any entered and licenced brewer of beer for sale in the United Kingdom, such beer or ale being in casks of not less than thirty-six gallons, and in the brewing whereof not less than two bushels of malt shall have been used to every thirty-six gallons of such beer or ale; and all and every person intending to export such beer or ale from any part of the United Kingdom shall give to the Excise port surveyor, or officer of Excise acting as port surveyor, at the port of shipment, notice thereof, in manner directed and required by an act passed in the fifty-sixth year of the reign of his Majesty King George the Third, intituled *An act for the making more effectual provision for the prevention of smuggling, and rewarding officers and persons making seizures and capturing smuggling vessels, for licencing luggers employed in the North Sea fishery, and obliging exporters of exciseable goods on drawbacks to give notice of shipment* (*a*); and the said export surveyor, or other officer of Excise acting as export surveyor, having examined or caused to be examined the beer or ale so intended to be shipped, and of the shipping whereof such notice shall have been given, or otherwise satisfied himself with respect to the same, shall sign his name to the said notice as having received the same, and

56 Geo. 3, c. 104.

(*a*) See 3 & 4 Will. IV. c. 52, ss. 61, 70, 71, 84, 85, and 102.

(1). *Ale and Beer.*

11 Geo. 4 & 1 Will. 4, c. 51.

shall transmit the said notice so signed to the proper officer of Customs in whose presence such beer or ale is to be shipped, and the said officer of Customs, having seen the said beer or ale duly shipped in his presence in and on board of the ship or vessel specified in the notice, shall certify the due shipment thereof and the day when the same was shipped on the said notice, and shall return the said notice, with such certificate of shipment thereon, to the Excise export surveyor or officer of Excise acting as export surveyor; and the said export surveyor or officer of Excise having received such notice, with such certificate of shipment thereon, shall, at the expiration of one calendar month from the date of such shipment, make out and deliver to the exporter, or his clerk or manager, a debenture, expressing the quantity of beer so shipped, and the amount of drawback payable in respect thereof."

Oath to be made on debenture for obtaining drawback (*a*).

Sect. 11. "That before any such debenture shall be paid, the exporter of the beer or ale therein mentioned, or his principal clerk or manager, together with the brewer thereof, or his foreman or manager, shall make oath (*a*) on the said debenture before the said export surveyor, or officer of Excise acting as such, that the said quantity of beer or ale was put on board the ship, and exported therein as merchandise to be sent beyond the seas, and no part thereof for the ship's use, and that according to the best of his and their knowledge and belief the same has been brewed wholly from malt which has been charged with and paid the duty of 2*s.* 7*d.* for every bushel thereof, and shall also specify in such oath the time when and the place where, and the brewer, being an entered and licenced brewer for sale, by whom such beer or ale was brewed, and that the quantity of malt employed in the brewing of such beer was in the proportion of not less than two bushels imperial standard bushel measure for every thirty-six gallons thereof; and if any such oath shall be found to be false or untrue in any particular or respect, the person making the false or untrue statement shall forfeit and lose the sum of 200*l.*, and the debenture on which the same shall be made shall be and become null and void, and if unpaid, payment thereof shall be withheld, or if paid, the amount thereof shall and may be recovered back, in the same manner and by the same means and methods as any duty of Excise or penalty may be sued for and recovered under any law or laws of Excise."

Collector of Excise, on debenture being produced to pay the amount.

Sect. 12. "That every such debenture, together with the said oath thereon, being produced to the collector of Excise within whose collection such beer or ale shall have been exported, the said collector shall forthwith, out of the monies in his hands, pay the amount thereof to the person or persons who shall appear by the said debenture to be entitled to the same."

Where a landing certificate is required, it shall be produced before payment.

Sect. 13. "Provided always, that where by any law or laws of Excise in force a certificate of the due landing of any goods or commodities at the place to which the same shall have been exported on drawback as merchandise shall be required, such certificate of the due landing of any ale or beer exported to any such place shall be produced to the collector of Excise before any such debenture shall be made out or paid."

All laws in force relating to export of exciseable commodities on drawbacks to apply to export of beer.

Sect. 14. "That all the laws, clauses, enactments, powers, authorities, rules, regulations, fines, penalties, and forfeitures in force in Great Britain before the passing of this act, relating to the export of any exciseable goods or commodities on drawbacks, shall, as far as the same shall be applicable, extend to and be deemed and construed to extend to the exportation of beer and ale under the authority of this act from any part of the United Kingdom, and shall be observed, enforced, and put in execution with respect to such exportation, and the payment of

(*a*) Now a declaration, see *ante*, p.620, *note* (*a*).

the drawback hereby granted, as fully and effectually as if the same were repeated and re-enacted in this act."

(1). *Ale and Beer.*

11 Geo. 4 & 1 Will. 4, c 51.

Brewers to make entry of all premises and utensils used for brewing or storing beer and malt.

Sect. 15. "That every brewer of beer for sale in Great Britain shall make a true and particular entry in writing of every store, building, room, and place, and of every mash-tun, by him or her intended to be used in or for the brewing or keeping of worts or beer, at the nearest office of Excise, specifying in such entry the particular use or purpose for which such store, building, room, or place shall be intended to be used, and shall also specify and distinguish in such entry every building or place in which he or she shall intend to store and keep the malt and the hops to be used by him or her in the brewing of beer, and shall store and deposit all such malt and all such hops in one or more of such entered buildings so specified to be used for keeping malt or for keeping hops respectively, and shall not use or employ any malt or hops which shall not have been so stored and deposited in and taken from one or more of such buildings or places so specified and distinguished; and if any such brewer shall use any store, building, room, or place, or mash-tun, without having made such entry thereof as aforesaid, in or for the brewing or keeping of worts or beer, or shall store or keep any malt or hops to be used by him or her in the brewing of beer in any building or place which shall not have been specified and distinguished in such entry as aforesaid, or shall use or employ any malt or hops in the brewing of beer which shall not have been stored and deposited in and taken from an entered building or place so specified and distinguished as aforesaid, every such brewer so offending shall for every such offence forfeit and lose the sum of 200*l.*; and all worts or beer which shall be found in any store, building, room, or place, or mash-tun, not specified and distinguished in such entry as aforesaid, and the casks containing the same, and all malt or hops which shall be found in any store, building, room, or place entered or used for the brewing of beer, other than malt taken from one or more of such buildings or places so specified and distinguished, for the purpose of being employed in the brewing of beer, shall be forfeited, and shall and may be seized by any officer of Excise."

Penalty 200*l.* and forfeiture of utensils, &c.

Officers may enter any buildings or places used by brewers for the purpose of inspecting account of beer or malt therein (*a*).

Sect. 16. "That it shall be lawful for any officer of Excise, and every person in aid and assistance of such officer, at any time, to enter into and remain so long as such officer may think fit, for the purposes hereinafter mentioned, in any building or place belonging to or used by any such brewer, or by any dealer in or retailer of beer, for the brewing or keeping of worts or beer, or for the storing or keeping of malt or hops; and it shall be lawful for such officer of Excise, and any person in aid and assistance of such officer, to inspect any such building or place, and to take such account as such officer shall deem necessary of all worts, beer, and malt and hops therein, and of all other matters and things, and of all vessels, utensils, goods, and materials belonging to or in anywise appertaining to the trade or business of such brewer or dealer in or retailer of beer; and if any such brewer or dealer or retailer of beer shall oppose, molest, obstruct, or hinder any officer of Excise, or any person acting in the aid or assistance of such officer, in entering into or remaining in any such building or place as aforesaid, or in inspecting the same, or taking any account as aforesaid, or in the due execution of the duty of such officer, every such brewer or dealer or retailer so offending shall for every such offence forfeit and lose the sum of 100*l.*"

Penalty on obstructing officers, &c. 100*l.*

No brewer to have raw or unmalted grain in his brewery premises.

Sect. 17. "That it shall not be lawful for any brewer of beer for sale in the United Kingdom to have in his or her brewery, or in any part of the entered premises, or in any mill connected with such brewery or entered premises, any raw or unmalted corn or grain whatsoever, either

(*a*) See Orders of the Board, of dates 5th May 1841, and 3rd Nov. 1841, as to the manner of inspecting.

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11 Geo. 4 & 1 Will. 4, c. 51.

whole or unground, or ground or bruised; and that all raw and unmalted corn or grain, whether whole or unground, or ground or bruised, which shall be found in such brewery or premises or mill, and all malted corn or grain, whether whole or unground, or ground or bruised, with which such raw unmalted corn or grain may have been or shall be mixed, shall be forfeited and may be seized by any officer of Excise, together with all sacks, casks, vessels, or packages in which such raw or unmalted corn or grain shall and may be contained, or in which such raw and unmalted corn or grain, and the malted corn or grain with which the same may or shall have been mixed, shall or may be contained; and every brewer shall for every such offence forfeit the sum of 200*l.*"

Sect. 18. For allowing beer, not intended to be sent into consumption until after the 10th day of October, 1830, to be brewed free of duty.

Sect. 19. If any beer brewed as duty-free shall be sent into consumption prior to 10th of October, 1830, or regulations not complied with, brewer to be charged and pay duty on all beer brewed by him.

Sect. 20. Beer brewed and exported before 14th April, 1830, to be entitled to drawback on exportation until 5th of April, 1831.

Sect. 21. Regulations as to exportation of such beer.

Nothing in the 1 Will. 4, c. 64 (*a*), to affect licences required by law to be taken out by brewers and dealers in beer, and by publicans.

Sect. 22. "And whereas an act was passed in this present session of Parliament, intituled *An act to permit the general sale of beer and cyder by retail in England*, whereby the commissioners of Excise are authorized and empowered to grant licences to persons to retail ale or beer or cyder without such persons obtaining or procuring a certificate or authority granted to such persons by justices of the peace or magistrates; be it further enacted, that nothing in the said act or in this or any other act contained shall extend or be deemed or construed to extend in any manner to interfere with the licences now required by law to be taken out and renewed by brewers of and dealers in beer, and persons keeping common inns, alehouses, and victualling houses, and selling beer, ale, and cyder, and wines and spirituous liquors, by retail, to be drank or consumed on the premises, but that all and every brewers and brewer of and dealer in beer shall take out such licences as are now by law required to be taken out by such brewers and dealers respectively; and every person who shall sell any beer or ale in quantities not less than four gallons and a half or two dozen reputed quart bottles, to be drank or consumed elsewhere than on the premises where sold, shall be deemed a dealer in beer; and every person who shall keep a common inn, alehouse, or victualling house, and sell beer, ale, and cyder, and wines and spirituous liquors, by retail, to be drank and consumed on the premises, shall take out the several licences now by law required, under the same rules, regulations, restrictions, powers, authorities, provisions, penalties, and forfeitures as such licences are now granted and issued under."

Sect. 23. Nothing in this act to interfere with the rights of magistrates, trustees, &c. in cities, burghs, and places in Scotland, to collect their local duties on beer and ale (*b*).

Sect. 24. Penalty on brewers neglecting or refusing to make returns, or making false returns.

56 Geo. 3, c. 58. Adulteration.

By the 56 Geo. III. c. 58, intituled "*An act to repeal an act made in the 51st year of his present Majesty, for allowing the manufacture and use of a liquor prepared from sugar for colouring porter,*" after reciting the 51 Geo. III. c. 87, and the 55 Geo. III. c. 30, and that great frauds have been and are committed upon the revenue, and also upon the

(*a*) See *The Mayor of Leicester* v. *Burgess*, 5 *B. & Ad.* 246; 2 *Nev. & Man.* 131, S. C.

(*b*) The allusion here, in c. 51, to c. 64, would seem to imply that the latter act was expected to have received the Royal assent before the former.

brewer and the public, under pretence of using such colouring; and it is expedient to repeal the said duty and the said payments so respectively required to be made on taking out such licence as aforesaid, and also the said act made in the 51st year aforesaid; it is enacted "That from and after the 5th day of July, 1817, the said recited duty, and the said respective payments so required to be made on taking out such licence as aforesaid, shall cease and determine, and be no longer paid or payable: and that, from and after the day and year last aforesaid, the said act, made in the 51st year of his said Majesty's reign, shall be and the same is hereby repealed, save and except in all cases relating to the recovering, allowing, or paying any arrears thereof respectively, which may at that time remain unpaid, or to any fine, penalty, or forfeiture, fines, penalties, or forfeitures relating thereto respectively, which shall have been incurred at any time before or on the said 5th day of July, 1817."

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From July 5th, 1817, certain duty granted by recited acts, and also the 51 Geo 3, c. 87, repealed.

Sect. 2. "No brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, shall receive or take into or have in his, her, or their custody or possession, or make, or use, or mix with, or put into any worts or beer, any liquor, extract, calx, or other material or preparation for the purpose of darkening the colour of worts or beer, or any liquor, extract, calx, or other material or preparation, such as has been heretofore or as shall hereafter be made use of for or in the darkening of the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing; or shall receive or take into or have in his, her, or their custody or possession, or use or mix with or put into any worts or beer, any melasses, honey, liquorice, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, or opium, or any extract or preparation of melasses, honey, liquorice, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, or opium, or any article or preparation whatsoever, for or as a substitute for malt or hops; and if any such brewer or brewers of, or dealer or dealers in, or retailer

No material or preparation of description mentioned in act shall be in possession of any brewer or dealer, or used in colouring of beer (a).

(a) The provisions that have been made by the legislature to preserve the purity of beer are liberally construed in our courts of justice in advancement of the objects for which they were enacted. Where a druggist, after the passing of the stat. 42 Geo. III. c. 38, sold a quantity of drugs, consisting of Spanish juice, isinglass, ginger, and other articles, to a brewer, knowing they were to be used in a brewery, it was holden that he could not recover the price, (*Langton* v. *Hughes*, 1 *M. & Sel.* 593); and a remedy was also provided for this particular case by the stat. 51 Geo. III. c. 87, s. 17, which also provided, that brewers should not receive or take into their possession certain ingredients, as grains of paradise, &c., (51 Geo. III. c. 87, s. 16. Penalty 200*l.*, and forfeiture of goods), these articles having been found to be frequently employed to an unlawful purpose; and it is no defence to a person charged with an offence against this statute, that he also exercised the trade of a *distiller* at a place distinct from his brewery, and that the noxious ingredients were found at that place. (*Attorney-General* v. *King and Others*, 5 *Price*, 195). But an information on such statute, charging a receiving and taking into possession, has been holden not to be maintainable, where it was proved that the act of receiving was antecedent to the statute, although the possession had continued ever since. (*Ibid.*) It was held that a record of condemnation in the Court of Exchequer was conclusive evidence against the defendant in an action for the penalty; but it was not evidence of immaterial averments, which are stated in it under a scilicet; and a condemnation for an act of forfeiture created by one statute is not evidence on a charge of an offence against the same party, with respect to the same goods, created by another statute. (*Attorney-General* v. *King*, 5 *Price*, 195). The keeper of a beer shop licensed under 1 Will. IV. c. 64, and 4 & 5 Will. IV. c. 84, is liable to the penalties imposed by the 56 Geo. III. c. 58, s. 2, for having in his possession any of the prohibited articles therein specified, or any other article or preparation to be used as a substitute for malt and hops. (*Attorney-General* v. *Lockwood*, 9 *Mee. & Wels.* 378).

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56 Geo. 3, c. 58.

or retailers of beer, shall receive or take into or have in his, her, or their custody or possession, or make or use in brewing, or mix with or put into any worts or beer, any liquor, extract, calx, or other material or preparation for the purpose of darkening the colour of worts or beer, or any liquor, extract, calx, or other material or preparation such as has been heretofore or as shall hereafter be made use of for or in the darkening of the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing, or shall receive or take into or have in his, her, or their custody or possession, or shall use or mix with or put into any worts or beer, any melasses, honey, liquorice, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, or any extract or preparation of melasses, honey, liquorice, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, or opium respectively, or any article or preparation whatsoever, for or as a substitute for malt or hops; all such liquor, extract, calx, melasses, honey, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, opium, extract, article and preparation as aforesaid, and also the said worts and beer respectively, shall be forfeited, together with the casks, vessels, or other packages containing the same, and shall and may be seized by any officer or officers of Excise; and such brewer or brewers of, dealer or dealers in, or retailer or retailers of beer so offending as aforesaid, shall for each and every such offence, forfeit and lose the sum of 200*l.*"

Penalty

No druggist shall sell such colouring to any brewer or dealer (*a*).

Sect. 3. "No druggist or druggists, or vender or venders of, or dealer or dealers in drugs, or chemist or chemists, or other person or persons whatever, shall sell, send, or deliver, or cause, procure, permit, or suffer to be sold, sent, or delivered to any licensed brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, knowing him, her, or them to be so licensed or to be reputed to be so licensed, or shall sell, send, or deliver, or cause or procure to be sold, sent, or delivered to any other person or persons for or on account of, or in trust for, or for the use of any such brewer or brewers, dealer or dealers, or retailer or retailers, any liquor called or known by the name or description of or sold as colouring, from whatever materials the same may have been made, or any other material or preparation other than unground brown malt, for the purpose of darkening the colour of worts or beer, or any liquor or preparation such as has been heretofore or shall hereafter be made use of for or in the darkening of the colour of worts or beer, or any melasses, honey, liquorice, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, or opium, or any extract or preparation of melasses, honey, liquorice, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, or opium, or any article or preparation to be used in worts or beer, for or as a substitute for malt or hops respectively; and if any druggist or druggists, or vender or venders of, or dealer or dealers in drugs, or any chemist or chemists, or any other person or persons whatever, shall sell, send, or deliver, or cause, or procure, permit, or suffer to be sold, sent, or delivered to any licensed brewer or brewers of, or dealer or dealers in, or retailer or retailers of beer, knowing him, her, or them to be so licensed, or to be reputed to be so licensed, or shall sell, send, or deliver, or cause or procure to be sold, sent, or delivered to any other person or persons for or on account of, or in trust for, or for the use of any such brewer or brewers, or dealer or dealers, or retailer or retailers of beer, any liquor called or known by the name or description of or sold as colouring, from whatever materials the same may have been made, or any other material or preparation, other than unground brown malt, for the purpose of darkening the colour of worts or beer, or any liquor or preparation such as has been heretofore used or as shall hereafter be made use of for or in the darkening the colour of worts or beer, except as aforesaid, or any melasses, honey, liquorice, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, or any extract

(*a*) See note last page.

or preparation of melasses, honey, liquorice, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, opium, or any article or preparation to be used in worts or beer for or as a substitute for malt or hops respectively; all such liquor called or known by the name or description of or sold as colouring, and material or preparation for the purpose aforesaid, and liquor and preparation used, or which shall hereafter be used for or in the darkening the colour of worts or beer, melasses, honey, liquorice, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, extract or preparation of melasses, honey, liquorice, vitriol, quassia, coculus Indiæ, grains of paradise, Guinea pepper, opium, and article or preparation to be used for or as a substitute for malt or hops respectively, shall be forfeited, and the same respectively shall and may be seized by any officer or officers of Excise, and the druggist or druggists, vender or venders of, or dealer or dealers in drugs, or chemist or chemists, or other person or persons whatever so offending, shall, for each and every such offence, forfeit and lose the sum of 500*l.*"

56 Geo. 3, c. 58.

Penalty.

The 1 & 2 Geo. IV. c. 22 (*a*), intituled, "An Act for altering and amending the Laws of Excise for securing the payment of the Duties on Beer and Ale brewed in Great Britain," after reciting that the laws made for securing the duties of Excise upon and in respect of beer have been found insufficient for the purposes thereby intended, enacts by—

1 & 2 Geo. 4, c. 22.

For securing payment of duties.

Sect. 1. "That every brewer of beer for sale shall enter, or cause to be entered, in a book or paper to be delivered to him by the officer of Excise, and at all times kept by such brewer in some public and open part of his entered premises ready for the inspection of the officers of Excise, the quantity of malt which he or she shall intend to use in his or her next brewing, together with the day when such brewing is intended to be made; and such entry shall be so made before any part of such malt shall be mashed, or any water or other liquor put thereto or mixed therewith; and every such brewer shall, at the time of making such entry, write or cause to be written, in such book or paper opposite such entry, the date when such entry was so made; and if any such brewer shall refuse or neglect to make such entry as aforesaid, or shall cancel, obliterate, or alter, or cause, or suffer, or permit to be cancelled, obliterated, or altered, any such entry, or shall make any untrue entry therein, or shall not at all times keep such book or paper in some public and open part of his entered premises ready for the inspection of the officers of Excise, or shall mash, or put to, or mix any malt with water or other liquor before such entry shall be made, he or she shall, for every such offence, forfeit the sum of 200*l.*"

Brewers to enter in a book, delivered by officer, quantity of malt to be used in brewing, &c.

Sect. 2. "No such brewer shall remove or cause to be removed his or her malt which has been mashed, or any part thereof, from the tun or vessel in which the same has been mashed, until the proper officer shall have gauged and taken an account of the quantity of such malt; or use, cause, permit, or suffer to be used any means whatever to prevent or hinder such officer or officers of Excise from taking an accurate gauge and account thereof: and if any person or persons shall remove, or cause, suffer, or permit to be removed any part of such malt, before such officer shall have guaged and taken an account of the same, or shall use any means as aforesaid, or obstruct, hinder, molest, or prevent any officer or officers in or from so doing, or in execution of any of the powers and authorities given or granted to him or them by this act, every such person or persons shall severally forfeit for every such offence the sum of 200*l.* Provided that no such brewer or other person shall incur the penalty aforesaid for removing any such malt after all the worts have been drawn off from such malt, without any officer

Mashed malt not to be removed till gauged, &c. by officer.

Penalty, 200*l.*

Not incurred for removing malt after worts drawn off, if officer no-

(*a*) The portion of this act here printed was left unrepealed by the 11 Geo. IV. & 1 Will. IV. c. 57, s. 3; *see ante*, p. 459.

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1 & 2 Geo 4, c. 22.

gleet to attend within an hour after specified time.

Samples of wort may be taken after it is drawn from mash tun.

having gauged and taken an account thereof, if such brewer shall, at the time of making such entry, have specified in such book or paper and entry as aforesaid the time for such officer to attend to take such gauge and account, and such officer or officers shall not attend for that purpose within an hour after the time so specified."

Sect. 3. "It shall be lawful for any officer of Excise to take a sample or samples, not exceeding one pint at each time, of any wort or worts at or on the entered premises of any such brewer, at any time after the same shall have been drawn from the mash-tun, as often as may be necessary for the purpose of ascertaining the specific gravity thereof; returning such sample to such brewer after the specific gravity thereof has been ascertained, or paying him or her for the same at and after the rate of the current price of beer made from such wort; and no such brewer shall ferment or mix, or cause, permit, or suffer to be fermented or mixed, any wort with any yeast or other matter or thing for occasioning fermentation, until the proper officer has taken such sample; and if any such brewer shall ferment or mix, or cause, permit, or suffer to be fermented or mixed, any of his or her wort with any yeast or other matter or thing for or occasioning fermentation, until such officer has taken such sample, he or she shall forfeit for every such offence the sum of 200*l.*: Provided that no such brewer shall incur the penalty last aforesaid, for fermenting or mixing any of his or her wort with yeast, or any other matter or thing occasioning fermentation, after the expiration of one hour after such wort has been run or drawn off from the copper in which the same has been boiled with hops, without any sample being thereof taken as aforesaid, if such brewer shall at the time of making such entry have specified in such book and paper and entry the time for such officer to attend to take and draw such sample, and such officer shall not attend for that purpose within an hour after the time so specified."

Worts not to be fermented till samples taken, on penalty of 200*l.*

Not to be incurred if officer neglect to attend within an hour after specified time.

Recovery and application of forfeitures.

Sect. 6. "That all fines, penalties, and forfeitures imposed by this act, shall be sued for, recovered, levied, or mitigated by such ways, means, or methods, as any fine, penalty, or forfeiture may be sued for, recovered, levied, or mitigated by any law or laws of Excise, or by action of debt, bill, plaint, or information in any of his Majesty's courts of record at Westminster, or in the court of Exchequer in Scotland respectively: and that one moiety of every such fine, penalty, or forfeiture shall be to his Majesty, his heirs and successors, and the other moiety to him, her, or them, who shall discover, inform, or sue for the same."

(2). *Auctions and Auctioneers.*

(2.) Things sold by Auction.

19 Geo. III. c. 56;	41 Geo. III. c. 91;	55 Geo. III. c. 30; c. 142;
28 Geo. III. c. 37;	42 Geo. III. c. 93; c. 116;	59 Geo. III. c. 32; c. 54;
29 Geo. III. c. 63;	43 Geo. III. c. 69; c. 130;	3 Geo. IV. c. 27;
30 Geo. III. c. 26;	45 Geo. III. c. 30;	5 Geo. IV. c. 75;
32 Geo. III. c. 11; c. 41;	50 Geo. III. c. 41;	6 Geo. IV. c. 16; c. 81;
38 Geo. III. c. 54;	51 Geo. III. c. 47; c. 95;	3 Vict. c. 17;
41 Geo. III. c. 42;	52 Geo. III. c. 53;	

Auctioneer to take out annual licence,

It has already been stated that every person exercising or carrying on the business of an auctioneer must take out annually a £5 licence for that purpose; for the Excise regulations on this subject, under the 6 Geo. IV. c. 81, and the penalties incurred by persons infringing them, *see ante*, p. 642 *et seq.*, "*Duties of Excise and Licences.*"

and enter into bond (a).

And the bond required of such person on taking out the licence, as

(*a*) If the bond be forfeited under 19 Geo. III. c. 56, s. 7, the penalty is a debt, and not merely a security to compel an account, *R.* v. *Christy*, 2 *Austr.* 586; and the Court of Exchequer refused to release on terms, *Ibid.*; and the king is not affected by 4 Anne, c. 16, as to admit of a plea of payment after the day. *R.* v. *Ellis*, 1 *Price*, 23.

directed by the 42 Geo. III. c. 93, s. 14, amended as to the amount by the 43 Geo. III. c. 130, s. 1, is still necessary by the 6 Geo. IV. c. 81, s. 9. (*See ante*, p. 642 *et seq.*)

(2). *Auctions and Auctioneers.*

Duties payable *on sales* by auction (*a*).

The 19 Geo. III. c. 56, repealed the former act of the 17 Geo. III. c. 50, which first imposed a duty on sales by auction, and granted other duties in lieu; these again were altered by later statutes. With the exception of the additional duty of £5 per cent. imposed by the 3 Vict. c. 17, the following are the amounts of duties upon the proceeds of sales by auction:—

	£	s.	d.
By the 55 Geo. III. c. 142. "For every 20*s.* of the purchase-money arising or payable by virtue of any sale at auction in Great Britain, for the benefit of the growers or first purchasers respectively of any *sheep's wool*, the growth or produce of any part of the United Kingdom	0	0	2"
By the 43 Geo. III. c. 69, a duty of 6*d.*, and by the 45 Geo. III. c. 30, an additional 1*d.*, making "For every 20*s.* of the purchase-money arising or payable by virtue of any *sale* at auction in Great Britain, of any *interest*, in possession or reversion, in any freehold, customary, copyhold, or leasehold lands, tenements, houses, or hereditaments, and any share or shares in the capital or joint stock of any corporation or chartered company, and of any annuities or sums of money charged thereon, and of any ships and vessels, and of any reversionary interest in the public funds, and of any plate or jewels, and so in proportion for any greater or less sum of such purchase-money (*b*)	0	0	7"
By the 43 Geo. III. c. 69, 10*d.*, and by the 45 Geo. III. c. 30, an additional 2*d.*, making "For every 20*s.* of the purchase-money arising, or payable, by virtue of any sale at auction in Great Britain, of furniture, fixtures, pictures, books, horses and carriages, and all other goods and chattels whatsoever, and so in proportion for any greater or less sum of such purchase-money . . .	0	1	0"

"The duties to be paid by the auctioneer, agent, factor, or seller by commission."

(*a*) *What is a sale or not.* Although the words in 43 Geo. III. c. 69, and 45 Geo. III. c. 30, impose the duty on every 20*s.* of the purchase-money, "*arising or payable by virtue of any sale, &c.,*" yet as the 19 Geo. III c. 56, s. 6, declares that the duties shall be a charge upon the auctioneer "*immediately upon knocking down the hammer, or other closing of the bidding,*" there are many cases in which the duty may attach, although the sale cannot, or may not, be afterwards enforced. Thus, where a drunken man or an insolvent was declared the bidder, or a person refused to sign a contract sufficient to take the case out of the Statute against Frauds, the auctioneer is nevertheless liable to pay the duty. This was to prevent fraud and connivance. For as to any question between seller and buyer, it was determined, (*Payne* v. *Cave*, 3 *Term R.* 148), that a bidder at an auction under the usual conditions, that the highest bidder shall be the purchaser, may retract his bidding any time before the hammer is down; and see 1 *Bla. R.* 601; *Cook* v. *Oxley*, 3 *T. R.* 653; 4 *Bing.* 658; 16 *East*, 45.

Where an auctioneer knocked down a lot to a bidder, but did not write down his name as the purchaser, and such person afterwards refused to complete the purchase, and it could not be enforced against him, it was held, that the auctioneer could not recover the duty which he had paid to government on the sale from such bidder, which, by the conditions, was to be paid by the purchaser; (1 *M'Clel. Rep.* 25); and *semble* he could not recover the duty from the vendor. (*Ib.*) The acts apply to every mode of sale whereby the highest bidder is to be deemed the purchaser. See several instances, *Sugden, V. & P.*, 10th ed., Vol. I. ch. 1.

(*b*) See *Sugden, V. & P.*, 10th ed. Vol. I. ch. 1. The sale by auction of assignments of dock rates, being a charge upon the docks, is the sale of an interest in land, and liable only to the duty of 7*d.* in the pound. Trustees under an act of Parliament are liable to the duty. (*R.* v. *Warmesley*, 8 *Price*, *R.* 180). The same point ruled as to sales by auction of bonds, for securing money borrowed on parish rates. (*The King* v. *Boote*, 3 *Price*, 341).

(2). *Auctions and Auctioneers.*

Exemptions.

Piece goods wove in this kingdom may be sold in the quantity taken from the loom, and in lots of 20l. or upwards, without duty.

But not in any other than entered places, nor unless goods are exposed at the sale.

By the 29 Geo. III. c. 63, s. 1, "All goods whatsoever, woven or fabricated in the loom in this kingdom, which shall be sold entire in the piece or quantity in which the same were taken from the loom, and in lots, each lot whereof shall be of the price of twenty pounds sterling or upwards, shall and may be sold by public sale, by way of auction, in lots as aforesaid, for or on the account of the manufacturers or first purchasers thereof respectively, by any person duly licensed to exercise the trade or business of an auctioneer, but not otherwise, free of the said duty."

Sect. 2 provides and enacts, "That no person shall be exempted from the payment of the said duty, for or in respect of any such goods sold by way of auction, unless such sale shall be carried on in some warehouse, room, or place, whereof a true and particular entry in writing shall have been made with the proper officer at the next office of Excise within the limits where such warehouse, room, or place shall be situated, and unless such goods shall be openly shewn and exposed at the time and place of such sale."

Auctioneer to give security for delivering, at next Excise office, an account of sale of such goods, &c.

Sect. 3 provides and enacts, "That every person acting as auctioneer at every such public sale by way of auction as aforesaid, shall, over and besides the bond now directed by law to be given on receiving his licence, give further security by bond to his Majesty, his heirs and successors, in the sum of five thousand pounds, with two or more sureties, which security the commissioners of Excise, or any two or more of them for the time being, in England and Scotland respectively, or such person or persons as the said commissioners respectively shall from time to time appoint for that purpose, are hereby authorized and empowered to take, that he will within fourteen days after such sale at auction of any goods woven or fabricated in the loom as aforesaid, deliver, at the next office of Excise within such limits as aforesaid, a true, exact, and particular account in writing of the several lots and parcels of such goods which shall have been sold, the amount of the money bid at such sale, and the price of each lot and parcel; and further, that he will not at any time knowingly offer or put up for sale, or sell at auction, any piece-goods or other goods woven or fabricated in the loom out of this kingdom, or any goods woven or fabricated in the loom in this kingdom which shall not be offered or put up for sale or sold entire in the piece or quantity in which the same were taken from the loom, and in lots as aforesaid, for or on the account of the manufacturer or first purchaser thereof, without charging, for every twenty shillings of the purchase-money thereof, the said duty, according to the rules and directions of an act of the seventeenth year of his present Majesty's reign, intituled, 'An Act for granting to his Majesty certain Duties on Licences to be taken out by all Persons acting as Auctioneers; and certain Rates and Duties on all Lands, Houses, Goods, and other things sold by Auction: and upon Indentures, Leases, Bonds, Deeds, and other Instruments;' and that he will not be concerned in any untrue or fraudulent contrivance or device with intent to sell any piece-goods, or other goods woven or fabricated in the loom, contrary to the true intent and meaning of this act."

Bonds to be put in suit for breach thereof

Sect. 4. "That in case it shall appear that the party entering into such bond hath acted contrary to the true intent and meaning of such bond, and of this present act, it shall be lawful for the respective commissioners of Excise to cause every such bond to be put in suit."

By the 41 Geo. III. c. 91, s. 8, "All corn and grain of every sort, flour and meal, and all beef, pork, hams, bacon, cheese, and butter imported into Great Britain shall be free of the duty on the first sale thereof by auction on account of the importer; so as the same be entered at some custom-house at the port of importation, and the sale thereof be within twelve months, and by a licensed auctioneer."

Goods from Yucatan, whale

By the 30 Geo. III. c. 26, "All goods imported by way of merchandise from Yucatan, and by 32 Geo. III. c. 41, all whale oil (and by 41

Geo. III. c. 42, all elephant-oil produced from sea-cows or sea-elephants, and commonly called 'elephants' oil,'), whalebone, ambergris, and head-matter, and all skins of seals, and other animals living in the sea, and also elephants' teeth, palm-oil, dyeing-woods, drugs, and other articles for dyers' use, and all mahogany and other manufactured wood for the use of cabinet-makers and other manufacturers, imported in British ships from Africa, and (by 42 Geo. III. c. 93, s. 3) America, or any British settlement abroad (*a*), shall be free of the Excise duty on the first sale thereof at auction, by or for the account of the original importer to whom the same were consigned, and by whom they were entered at the custom-house, so as such sale be made within twelve months after such goods are imported, and the same be sold by a licensed auctioneer."

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and other oils, wood, &c.

By the 42 Geo. III. c. 116, s. 113, no auction-duty is payable in respect of monies produced by sale of estates sold by auction for redemption of land-tax.

Now on estates sold for redemption of land tax.

By the 52 Geo. III. c. 53, s. 1, "All coffee imported in any British ship from any British colony in America shall be sold by auction free of the auction-duty, whilst the same shall remain in warehouses under 43 Geo. III. c. 132, or any other act."

Coffee imported from British colonies.

By the 59 Geo. III. c. 54, s. 3, "All goods and effects imported in any ship built in the United States of America, or condemned as prize there, and being owned and navigated as hereinbefore mentioned, shall and may be sold by auction free of auction-duty; but nothing herein shall authorize the sale of any such goods or effects free of the said duty, unless on the first sale thereof by, or for the account of, the original importer by whom the same were entered at the custom-house at the port of importation, nor unless such sale shall be made within twelve months next after the time when such goods or effects shall have been so imported."

Certain imports from United States

By the 5 Geo. IV. c. 75, s. 2, "All goods and effects imported under stat. 51 Geo. III. c. 47, into any part of the United Kingdom, in any vessel built in any of the territories or dominions in the said act mentioned, or condemned as prize there, and being owned and navigated as in the said act is mentioned, shall be sold by auction, free of auction-duty. Provided that nothing in this act shall authorize the sale of any such goods, so free of the said duty, unless on the first sale thereof by, or for the account of, the original importer by whom the same were entered at the custom-house at the port of importation, nor unless such sale shall be made within twelve months next after the importation."

Goods of the Portuguese dominions imported under stat. 51 Geo. III. c. 47.

Proviso

By the 19 Geo. III. c. 56, s. 13, "Nothing in this act contained shall extend to any sales, by way of auction, of estates or chattels, made by any rule, order, or decree of his Majesty's Court of Chancery, or of Exchequer in England, before the Master in Chancery, or the deputy remembrancer of the said Court of Exchequer; or by any order or decree of the Courts of Great Sessions in Wales, or by any order or decree of the Court of Session or Exchequer in Scotland respectively; or to any such sales made by the East India Company, or the Hudson Bay Company, or by order of his Majesty's commissioners for the duties of Customs or Excise, or by order of the Board of Ordnance, or commissioners of the navy or victualling offices; nor to the sale by auction of any goods distrained for rent, or for non-payment of tithes; anything hereinbefore to the contrary notwithstanding."

Further exceptions

Certain auctions to which this act shall not extend.

Sect. 14, provides and enacts, "That nothing in this act contained shall extend to any auction to be held, on the account of the lord or

Not to extend to auctions for grant-

(*a*) See the acts relating principally to plantation produce on its first sale after importation, 17 Geo. III. c. 50, s. 12; 42 Geo. III. c. 93, s. 3; 47 Geo. III. sess. 2, c. 65; 52 Geo. III. c. 53, s. 1; 28 Geo. III. c. 37, s. 12; 30 Geo. III. c. 26, s. 1; c. 29, s. 2; 32 Geo. III. c. 41; 41 Geo. III. c. 42.

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ing copyhold or customary lands, &c.

lady of any manor, for the granting any copyhold or customary messuages, lands, or tenements, for the term of a life or lives, or any number of years; or to any auction to be held for the letting or demising any messuages, lands, or tenements (*a*), for the term of a life or lives, or any number of years, to be created by the person or persons on whose account such auction shall be held; or to the sale or sales of any woods, coppices, produce of mines or quarries, or to any contract relating thereto, or to the cutting or working the same, or to the sale of any materials used in the working of such mines or quarries respectively; or to the sale of any cattle, and live or dead stock, or unmanufactured produce of land; so as such sale or sales of woods, coppices, produce of mines or quarries, cattle, corn, stock, or produce of land, be made whilst they continue on the lands producing the same, and by the owner or owners of such lands, or proprietor or proprietors of, or adventurer or adventurers in, such mines or quarries respectively, or by his or their steward or agent, stewards or agents; anything herein contained to the contrary notwithstanding."

Not to extend to auctions for granting copyhold or customary lands, &c.

Sect. 15 provides and enacts, "That nothing in this or the said recited act" (the 17 Geo. III. c. 50) "contained shall extend, or be construed to extend, to charge with the said rate or duty, any estate, goods, or chattels sold at auction, under the authority of any sheriff or under-sheriff for the benefit of creditors, in execution of any judgment had or obtained; or any estate or effects of bankrupts, sold by order of the assignee or assignees under any commission of bankruptcy (*b*); or any goods imported into this kingdom, by way of merchandize, from any British colony or plantation in America, the same being of the growth, produce, or manufacture of the said colonies or plantation; on the first sale of such goods, by or for the account of the original importer to whom the same were consigned, and by whom they were entered at the custom-house at the port of importation, so as such sale be made within twelve months after such goods shall be so imported; nor to any ships, or their tackle, apparel, and furniture, or the cargoes thereof, which may be taken and condemned as prize, which shall be sold in this kingdom, by or for the benefit of the captors thereof; nor to charge with the said rate or duty any ships or goods that may be wrecked or stranded on the coasts of this kingdom, and sold by auction for the benefit of the insurers or proprietors thereof, or which may be sold, free of duty, to defray the charges of salvage; nor to charge with the said rate or duty any goods damaged by fire, and sold by order of and for the benefit of the insurers of such goods; nor to sales made by trustees chosen in pursuance of an act made in the twelfth year of the reign of his present Majesty, intituled 'An Act for rendering the payment of the Creditors of insolvent Debtors more equal and expeditious: and for regulating the diligence of the Law by Arrestment and Poinding; and for extending the privilege of Bills to Promissory Notes; and for limiting actions upon Bills and Promissory Notes in that part of Great

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(*a*) A *letting* by auction of *tithes* is within this exemption. (*The King* v. *Ellis*, 3 Price, 323).

(*b*) And see 6 Geo. IV. c. 16, s. 98; and 1 & 2 Vict. c. 110, s. 116. In the case of *The King* v. *Winstanley, in Exchequer*, 2 *Younge & J.* 126, a sale by auction by assignees of a bankrupt, of the absolute interest on an estate in fee which was in mortgage, was held not liable to the auction duty, overruling *Coare* v. *Creed*, 2 *Esp. R.* 699, and *The King* v. *Abbot*, 3 *Price, R.* 178; but upon a writ of error in the Exchequer Chamber, the chief justices, Lords *Tenterden* and *Best*, differed in opinion, and the lord chancellor affirmed the judgment of the Court of Exchequer *pro formâ*, in order that the question might be ultimately disposed of by the highest tribunal of the country. See *R.* v. *Winstanley*, 3 *Y. & J.* 126. A.D. 1829, a writ of error was brought in the House of Lords; and see the note in 3 *Younge & J.* 128, extracted from *Sugden's Law of Vendors and Purchasers*, 10th edit. p. 18, with valuable suggestions.

Britain called Scotland;' anything herein contained to the contrary notwithstanding."

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Penalties and forfeitures how to be recovered and applied.

Sect. 18. "That all fines, penalties, and forfeitures imposed by this act shall be sued for, levied, recovered, or mitigated, by such ways, means, and methods, as any fine, penalty, or forfeiture is or may be recovered or mitigated by any law or laws of Excise, or by action of debt, bill, plaint, or information, in any of his Majesty's Courts of Record at Westminster, or in the Court of Exchequer in Scotland; and that one moiety of every such fine, penalty, or forfeiture (all necessary charges for the recovery thereof being first deducted), shall be to his Majesty, his heirs and successors, and the other moiety to him or them who shall discover, inform, or sue for the same."

Buying in by the owner exempt from duty, when and upon what terms (*a*).

It is provided by the 19 Geo. III. c. 56, s. 12 (*b*), "That if the real owner shall become the purchaser by his own bidding, or the bidding of any other on his behalf, without fraud or collusion, the commissioners, or authorized officers, shall make to the owner an allowance of the said duties; provided notice be given to the auctioneer before such bidding, both by the owner and person intended to be the bidder, of such person being appointed by the owner; and provided such notice be verified by the oath of the auctioneer, as also the fairness of the transaction, to the best of his knowledge and belief: in case of dispute, the proof of the fairness to lie upon the auctioneer."

No allowances to be made to purchasers of their own effects, unless prior notice of their having authorized a bidder be given to auctioneer.

And the 28 Geo. III. c. 37, s. 20—after reciting that by the said act, made in the nineteenth year of the reign of his present Majesty, it is also enacted, that in case the real owner of any estate, goods, or effects, put up to sale by way of auction, shall become the purchaser by means of his own bidding, or the bidding of any other person in his behalf or for his use, at such sale, without fraud or collusion, then and in such case the respective commissioners of Excise in Great Britain, and such collectors, supervisors, and other officers of Excise, as are hereby respectively authorized within their respective collections and districts to receive the said duties mentioned in the said act, are thereby authorized and required to make an allowance to such owner of the duties arising by that act upon such bidding, provided notice be given to the auctioneer before such bidding, both by the owner and the person intended to be the bidder, of the latter being appointed by the former, and having agreed accordingly to bid at the sale for the use and behoof of the seller, and provided such notice be verified by the oath of the auctioneer, as also the fairness and reality of the said transaction to the best of his knowledge and belief: and whereas it is expedient that no such allowances shall be made, unless such notice in writing be given

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(*a*) The terms must be strictly complied with, or the duty will attach. Therefore, where an auctioneer was employed to sell an estate, the lowest price of which was fixed by the owner, and written down by him on a piece of paper, which was put under a candlestick at the time of sale, with the privity of the auctioneer, but not *signed by the owner*, nor any notice *in writing* given to the auctioneer of the price so set down, nor had the auctioneer given the previous notice of the sale to the collector of the duty, as required by 19 Geo. III. c. 56, s. 12; 28 Geo. III. c. 37, s. 20; and 42 Geo. III. c. 93, s. 1; but being asked at the sale whether he had taken the proper precautions to avoid the duty in case there was no sale, he said that it was his mode to fix a price under the candlestick, and if the bidding did not come up to that price it was *no sale or duty*. It was *held* that the duty attached though there was no sale, for want of taking the precautions required by the statutes under such circumstances, and that the auctioneer having been sued for the duty on his bond to the Crown, and compelled to pay it, he could not recover it over from the owner; he having warranted that proper precautions had been taken to prevent the duty attaching in the event, though both parties were mistaken in the law. (*Capp* v. *Topham*, 6 *East*, 392; 5 *Esp. Rep.* 1. See *Sugden's V. & P.* 10th ed. ch. 1.

(*b*) See similar provisions, 17 Geo. III. c. 50, s. 10.

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as is hereinafter directed—enacted "that no such allowance shall be made unless notice in writing, signed by the owner and the person intended to be the bidder, of the latter being appointed by the former and having agreed accordingly to bid at the sale for the use and behoof of the seller, shall have been given to the auctioneer before such bidding, nor unless such delivery of such notice shall be verified upon the oath of the auctioneer, as also the fairness of the transaction to the best of his knowledge."

An allowance of auction duty shall be made to owners of estates put up to auction when bought in for them by, or by order of an agent.

By 42 Geo. III. c. 93, s. 1, "The allowance aforesaid shall be made to the owner of any estate, goods, or effects, in respect whereof the auction duties shall not have been actually paid, and which have been or shall be put up to sale by way of auction, and bought in for the owner, either by his steward or known agent, actually employed in the management of such sale, or under a notice in writing signed as well by him as by the person intended to be the bidder being appointed by the owner, and having accordingly agreed to bid for the use of the seller; provided, that no such allowance shall be so made unless notice in writing, signed by such steward or agent, of his being about to bid for such owner, shall have been given to the auctioneer before such bidding; such delivery to be verified by the auctioneer's oath, and also the fairness of the transaction to the best of his knowledge and belief."

Notices to be produced by auctioneer; and proof of fairness to lie on him.

But by the 42 Geo. III. c. 93, s. 2, "No such allowance shall be made, unless, at the passing of his account, such notice be produced by the auctioneer; and if any dispute shall arise concerning the fairness of the transaction, the proof thereof shall lie on the auctioneer; and on failure therein, or in case of any unfair practice, no such allowance shall be made."

Duty of auctioneer to give previous notice of sale.

By the 19 Geo. III. c. 56, s. 9, "The auctioneer, if it be within the limits of the chief office of Excise in London, shall give two days' notice at the said office, elsewhere three days' notice, to the collector or at the next Excise office, in writing, signed by him, specifying the particular day when such sale shall begin; and shall, at the same time, or within twenty-four hours after, deliver a written or printed catalogue, attested and signed by such auctioneer or his known clerk, in which catalogue shall be particularly enumerated every article, lot, parcel, and thing intended to be sold at such auction. And if he shall presume to make such sale without delivering such notice and catalogue, or to sell any estate or goods not enumerated therein, he shall forfeit 20*l.*"

To make declaration whether sale took place.

By the 32 Geo. III. c. 11, "Every auctioneer who shall have delivered such notice or catalogue shall, within twenty-eight days (if within the limits of the chief office of Excise, elsewhere within six weeks,) after the day specified in such notice for such sale, deliver at such chief office, or to the collector of Excise in whose collection such sale has been or was intended to be, a declaration in writing, setting forth whether or not any such sale had been or was opened, or begun, under such notice, or any article, lot, parcel, or thing contained in such catalogue was bid for or sold at such auction; and such auctioneer or person acting as his clerk as aforesaid, shall make oath to the truth of such declaration before the said commissioners or collector, on pain of forfeiting 50*l.* for every neglect or refusal of delivering such declaration verified as aforesaid."

Duty, how to be paid.

And by the 19 Geo. III. c. 56, s. 6, "The aforesaid duties shall be a charge upon the auctioneer, *immediately upon the knocking down the hammer, or other closing of the bidding.*"

Sects. 7, 8. And he shall (in pursuance of his bond entered into at the time of his licensing), within twenty-eight days, if it is within the limits of the chief office of Excise in London, elsewhere within six weeks, deliver in an *account* in writing of the total amount of the money bid at each sale, and the several articles, lots, or parcels there sold, and the price of each:

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And shall at the same time make *payment* of the duties which he may retain out of the produce of the sale, or deposit made at such sale, or otherwise recover the same by action of debt, or on the case, against the person who employed him, or on whose account the goods were sold (*a*):

Payment.

Every person so acting as auctioneer, or the person who acted as his clerk at such sale, if any, shall make *oath* to the truth of the account.

Oath.

If such auctioneer shall neglect to deliver in his account, or to make payment, or if it shall appear that it was not a true and just account, the commissioners may put his bond in suit, unless they shall find sufficient cause to forbear the same; and, in case of a verdict or judgment against him, the licence shall be void."

Sect. 10. "But if such auctioneer, not being within the limits of the chief office of Excise in London, shall not be prepared to deliver in his account to the collector within whose collection the notice was delivered, and such sale by auction made, he may deliver in his said account within six weeks after every such sale at the chief office of Excise in London, and at the same time deliver a true copy of the notice and of the catalogue delivered by him before to the collector; and if he shall neglect to deliver such copy of the said notice, or of the said catalogue, he shall forfeit 20*l*."

By the 38 Geo. III. c. 54, s. 2, "Every auctioneer who shall neglect or refuse to make payment within the time limited by law of any duty chargeable on sales by way of auction by him held, shall forfeit double the said duty; and in case within fourteen days next after such auctioneer shall have been convicted in such penalty, and execution or process shall have issued on such conviction to levy such penalty, he shall not have sufficient goods or chattels whereon to levy the whole of such penalty, and the same, or any part thereof, shall remain unpaid at the end of such fourteen days; or if it shall appear that he hath acted contrary to the true intent and meaning of his bond, the said commissioners may cause such bond to be put in suit against him and sureties, unless they shall see sufficient cause to forbear the same; and in case of a verdict against such auctioneer, his licence shall be void."

Penalty on auctioneers not paying duties in legal time, &c. double duty, and forfeiture of bond.

Sect. 3. "Whereas there is no provision at present to relieve auctioneers against any over-payment made, except in cases where sales are rendered void by reason of the person for whom sold having no title thereto, or no right to dispose thereof; for remedy thereof, if any auctioneer shall make any over-payment for or on account of the duty, he may complain within twelve months after such over-payment before the said commissioners or justices respectively within whose jurisdiction such sale was made, who, upon such complaint, may hear and determine the same, and examine witnesses on oath on either side, and, on due proof, may relieve the party so complaining of so much of such payment as shall appear to have been overpaid."

If auctioneers make over-payments of duties, they may complain to commissioners of Excise, or justices where sale was made, who may relieve them.

By the 19 Geo. III. c. 56, s. 16, after reciting that for the better and more effectually preventing frauds which may be practised by auctioneers selling estates, goods, or chattels, under the authority of sheriffs, or their under-sheriffs, or under the order and direction of the assignees under any commission of bankruptcy, it is enacted, "That from and after the said fifth day of July, one thousand seven hundred and seventy-nine, every auctioneer who shall sell at auction any estates, goods, or chattels that have been seized by any sheriff or under-sheriff, or by their authority and by them, or either of them, taken for the benefit of creditors, in execution of any judgment had and obtained, shall specify and enumerate, in the catalogue by him to be delivered under the directions of

After July 5th, 1779, auctioneers selling any effects, &c. seized by a sheriff in execution, shall enumerate the particulars thereof in catalogue to be delivered by them, which shall be certified by sheriff, &c.

(*a*) But not if he omits to observe the regulations of the act, or neglects to have a proper contract signed by the purchaser. (*Cappv.* *Topham*, 6 *East*, 392; 1 *McClel. Rep.* 25; *Sugd. V.& P.* 8th ed. 18).

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this act, as well the particular estate and effects to be sold, and also the exact sum to be levied under such execution; and the sheriff or under-sheriff respectively shall and they are hereby required to subscribe and sign every such catalogue, and to certify at the foot thereof, that all and every the estates, goods, and effects, in such catalogue respectively specified and enumerated, were really and truly the property of the person against whom such judgment was had and obtained, and that the same and every part thereof were actually seized in execution of the same judgment; and every auctioneer who shall be employed, by the assignees under any commission of bankruptcy, to sell the effects of any bankrupt, shall likewise specify and enumerate in the catalogue to be by him delivered as aforesaid, the particular goods and effects then to be sold (*a*), and the assignees, or assignee if only one, under such commission, shall, and he and they is and are hereby required to subscribe and sign such catalogue, and to certify at the foot thereof, that all and every the estates, goods, chattels, and effects in such catalogue respectively specified and enumerated, were really and truly the property of the said bankrupt at the time of suing forth the said commission; which respective catalogue, so signed and certified as aforesaid, shall be produced by every such auctioneer, to the person to whom such auctioneer is by this act directed to deliver his account, before such auctioneer shall be permitted to pass his account, or to have the same allowed; and if such sheriff, under-sheriff, assignee, or assignees respectively, shall insert, or suffer or permit to be inserted, in any such catalogue so to be subscribed, signed, and certified as aforesaid, any estate, goods, chattels, or effects whatsoever, other than such as were really and truly the property of the debtor or debtors, bankrupt or bankrupts as aforesaid respectively; or if any sheriff or under-sheriff shall omit or neglect to certify on such catalogue the true sum to be levied, or shall certify thereon any false sum to be levied, then and in every such case, the party offending shall, for every such offence respectively, forfeit and lose the sum of twenty pounds."

And auctioneers employed to sell effects of any bankrupt, shall enumerate the particulars in catalogue as aforesaid, which shall be certified by assignees, &c.

Penalty on sheriff, &c or assignee, who shall suffer any estate, &c to be inserted in catalogue, which was not the property of debtor or bankrupt.

Sect. 17. "That from and after the said fifth day of July, one thousand seven hundred and seventy-nine, every auctioneer who shall be employed to sell any goods damaged by fire, sold by order of and for the benefit of the insurer or insurers of such goods, shall specify and enumerate, in the catalogue to be by him delivered as aforesaid, the particular goods then to be sold, and the insurers, or the insurer, if only one, shall, and he and they is and are hereby required to subscribe and sign such catalogue, and to certify, at the foot thereof, that all and every the goods in such catalogue respectively specified and enumerated were really and truly sold for the benefit of such insurer or insurers; which catalogue, so signed and certified as aforesaid, shall be produced by every such auctioneer, to the person to whom such auctioneer is by this act to deliver his account, before such auctioneer shall be permitted to pass his account, or to have the same allowed; and if such insurer or insurers respectively shall insert, or suffer or permit to be inserted in any such catalogue so to be subscribed, signed, and certified as aforesaid, any goods whatsoever other than such as were really and truly to be sold for the benefit of him or them as aforesaid: or if any insurer or insurers shall omit or neglect to certify on such catalogue the true particular of the goods to be sold, then and in every such case the party offending shall, for every such offence respectively, forfeit and lose the sum of twenty pounds."

Auctioneers employed to sell goods damaged by fire, for benefit of insurers, shall enumerate particulars in catalogue, which shall be certified by insurers.

Penalty on insurers who shall suffer to be inserted in catalogue any goods other than such as were to be sold for their benefit, &c.

Sect. 11. "If any sale of any estate, goods, or chattels shall be rendered void, by reason that the person for whose benefit they were sold *had no title to the same, or no right to dispose thereof* (*b*); then it shall

Sale void for defect of title.

(*a*) 6 Geo. IV. c. 16, s. 98.

(*b*) See *Sugden, V. & P.* 10th edit. p. 28. This is construed strictly. If the duty be paid to Excise, and no conveyance afterwards can be obtained in consequence of defect of title or right

be lawful for the auctioneer who paid the duty for the thing so sold, or for the person for whose benefit the same was sold, to lay his complaint before the commissioners of Excise, *or justices of peace*, within whose jurisdiction such sale was made (*a*), and they are required to hear and

to sell, then upon satisfactory proof before two magistrates for the district of the sale not having been completed within twelve calendar months after the sale, if rendered void within that time, or otherwise within three months after the discovery of the vendor having no title, (28 Geo. III. c. 37, s. 19, *post*, 736), and upon such proof being shown to the collector, the duty will be returned. But this only applies where vendor had no title and no power to sell; and when the vendor might produce a title, but refuses, then no return of duty can be obtained. *Ex relatione Mr. Carr*, solicitor to the Excise, A.D. 1828. See also *Sugd. V. & P.* 10th edit. ch. 1; where it is stated that the commissioners of Excise will not allow the duty unless they think that the vendor has used his utmost exertions to make a good title. An appeal, however, lies from the judgment of the commissioners, but as the King never pays costs they fall on the vendor, and in many cases would amount to more than the duty itself. *Ib.*

These exceptions are merely revenue regulations, and do not, as between vendor and purchaser, necessarily legalize the secret employment of puffers at a sale; and secret puffing will in some cases vitiate a sale.

The following valuable observations on this subject are from *Sugden's Law of Vendor and Purchaser*, 10th edit. 28—36. See also *Chitty, jun., on Contracts.*

" In *Bexwell* v. *Christie*, (H. 16 Geo. III.; *Cowp.* 395), Lord *Mansfield* and the other judges of B. R. followed the rule of the civil law, and treated a *private* bidding, by or on behalf of the vendor, as a fraud; but the legislature, by the subsequent statutes, imposing a duty on sales of estates by auction, seems to have been of a different opinion, and even to have sanctioned it. Lord *Rosslyn*, who was present at the making of the act, remarked, in the case of *Conolly* v. *Parsons*, (see 3 *Ves. jun.* 628) that the acts of Parliament go upon its being an usual thing and a fair thing for the owner to bid. The pressure, when the tax was imposed, was by embarrassing people who chose to dispose of their goods by auction, if they chose to be purchasers, by the tax falling upon them. His lordship added, that he thought it would have occurred either to Lord *Thurlow* or to him, when the exception in favour of the owner was proposed, that the case would not exist, as the owner could not be a bidder; or that, for his attempting to do what he could not by law, it would be just that he should pay the duty. It was very wrong to the public to let that clause stand, if at the time it was understood that the owner bidding was doing an illegal thing. The acts do not require an open notice, but only a private notice to the auctioneer, and an oath to prevent the setting up a bidding for the owner, that the bidder might evade paying the duty.

Consequences of employing puffers.

" Lord *Kenyon*, however, in the case of *Howard* v. *Castle*, where the purchaser was the only real bidder, and there were several puffers, (36 Geo. III.; 6 *Term Rep.* 642: see *Twining* v. *Morris*, 2 *Bro. C. C.* 326; and see 3 *Term Rep.* 93, 95), clearly coincided with Lord *Mansfield's* opinion, and held, that unless it was publicly known that the owner intended to bid, it was a fraud upon the purchaser, and consequently no action would lie against him for non-performance of his agreement. The acts of Parliament, he thought, did not intend to interfere with this point, but to leave the civil rights of mankind to be judged of as they were before. And *Grose*, J., also expressed his opinion, that the doctrine was not in the least impeached by the acts of Parliament.

" But in the case of *Conolly* v. *Parsons*, (3 *Ves. jun.* 625, n.), Lord *Rosslyn* said, he fancied the foregoing case turned on the circumstance that there was no real bidder; and the person refused instantly. It was one of those trap auctions that are so frequent in this city. The reasoning went large, certainly, and did not at all convince him. He said he should wish it to undergo a reconsideration; for if it was law, it would reduce every thing to a Dutch auction, by bidding downwards. He felt vast difficulty to compass the reasoning, that a person does not follow his own judgment because other persons bid; that the judgment of one person is deluded and influenced by the

(*a*) See *note* (*b*), *ante*.

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determine the same, and examine the witnesses upon oath; and thereupon, or by other due proof, to relieve the party of so much as shall be made out to have been overpaid."

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biddings of others. The facts of the case of *Conolly* v. *Parsons* do not appear in the report; but I learn, that there was a contest between real bidders, after the person employed to bid on the part of the vendors had desisted from bidding. The suit was compromised by the purchaser paying a considerable sum of money to the vendor to release him from the contract; and consequently Lord *Rosslyn* did not give judgment; but it seems he was clearly of opinion that the sale was valid.

"And in the later case of *Bramley* v. *Alt*, (3 *Ves. jun.* 620), where an estate was put up to sale by public auction, and an agent for the vendor bid 75*l.* an acre, without public notice of his intention to do so; and after a contest with real bidders the estate was bought at 101*l.* 17*s.* an acre; Lord *Alvanley*, then Master of the Rolls, decreed a specific performance with costs. And he concurred with Lord *Rosslyn* in considering the case of *Howard* v. *Castle* only as a decision, that where all the bidders except the purchaser are puffers, the sale shall be void.

"In a subsequent case, (*Smith* v. *Clarke*, 12 *Ves. jun.* 477), it appeared, that assignees of a bankrupt had put up the estate to sale by auction. It was proved that a bidder was employed on their parts to bid up to, but not to exceed, 750*l.*, the sum for which the estate was actually sold. The Master of the Rolls held, that the assignees had not committed any fraud; they did not employ the bidder for the purpose, generally, of enhancing the price, but merely to prevent a sale at an undervalue, and they stated previously what they conceived to be the true value, below which the lot ought not to be sold. He treated the case of *Howard* v. *Castle* as having proceeded on the ground of plain and direct fraud; and said, that in a similar case he should come to a similar conclusion.

"By these decisions, therefore, it was ruled, that a bidder may be privately appointed by the owner in order to prevent the estate from being sold at an undervalue; and that if there were real bidders at a sale, it must be supported, although the bidding immediately preceding that of the purchaser was a fictitious one. (*Smith* v. *Clarke*, 12 *Ves. jun.* 477). But Lord *Tenterden* again opened the question at Nisi Prius, and expressed extra-judicially the strong inclination of his opinion, that if a person be employed, with a view to save the auction duty, the sale is void, unless it be announced that there is a person bidding for the owner; the act itself is fraudulent. The statute was made for a different purpose; with a view to the duty only, and could not be made to sanction what was in itself fraudulent. (*Wheeler* v. *Collier*, 1 *Camp. Ca.* 123). And in a late case, *C. B. Alexander* treated it as clear, that the employment of a puffer vitiated the sale; (*R.* v. *Marsh*, 3 *Dou. & Jervis*, 331); but it was not necessary to decide that point. And in *Crowder* v. *Austin*, 3 *Bing.* 368, (a horse cause), after a *bonâ fide* bidding of 12*l.* the owner's servant made repeated biddings up to 23*l.* That appears to have been a mere fraud; but the court is reported to have been inclined to adhere to Lord *Mansfield's* opinion in *Bexwell* v. *Christie*. The authorities, however, preponderate in favour of the validity of a person privately bidding, and the practice is universally adopted, and ought not to be lightly disturbed. It would require a decision of the House of Lords to overrule the decisions, and it would be better to leave them undisturbed, restricted as the power now is. Where public notice has been given the contract will be binding on the purchaser, although there was no contest between real bidders, but only the purchaser, and the person employed to bid, bid against each other. (*Oldfield* v. *Round*, 5 *Ves. jun.* 508). Consistently with the above authorities, the rule, it should seem, would be the same, even where public notice had not been given, provided the bidder was appointed only to protect the vendor's interest. But where a person is employed, not for the defensive precaution, with a view to prevent a sale at an undervalue, but to take advantage of the eagerness of bidders to screw up the price, that will be deemed a fraud. (See 12 *Ves. jun.* 483). In *Fitzgerald* v. *Foster*, 31st July, 1813, the Vice-Chancellor seemed rather to be of opinion, that the appointment of one puffer was in no case bad. *Crowder* v. *Austin*, 3 *Bing.* 368. Neither do the cases authorize the vendor to appoint more than one person

By the 51 Geo. III. c. 95, s. 1, "The commissioners of Excise or justices before whom any complaint shall have been so laid [under stat. 19 Geo. III. c. 56, s. 11], and by whom the same shall have been so

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Commissioners or

on his behalf. It seems highly proper that a vendor should be permitted to appoint a person to *guard* his interests against the intrigues of bidders; but it does not follow that he may appoint more than one. The only possible object of such a proceeding is fraud. It is simply a mock auction; and notwithstanding Lord *Rosslyn's* impression, it is universally felt and acknowledged that the judgments of most men are decided and influenced by the biddings of others. And if a man believes the other bidders to be real ones, he advances under the apprehension that he shall let slip the opportunity of buying. As far as any aid is sought from the auction duty acts, in support of private biddings on behalf of the owner, it is clear that they do not authorize or sanction the appointment of more than one person. In the report of *Conolly* v. *Parsons*, it is stated that *persons* were employed to bid, and did bid, for the vendors; but the fact is, that one person only was employed by them, and actually bid on their behalf. The Master of the Rolls observed, in the late case of *Smith* v. *Clarke*, that he did not see, that if several bidders were employed by the vendor, in that case, a court of equity would compel the purchaser to carry the agreement into execution; for that must be done merely to enhance the price. It was not necessary for the defensive purpose of protection against a sale at an undervalue. (See 12 *Ves. jun.* 483; and see 8 *Term Rep.* 93, 95).

"In a later case upon this subject, Lord *Tenterden* held clearly that the sale was void in point of law, as two persons had been employed to bid, although they were both limited not to go beyond the same fixed sum. The current of authority, therefore, is clearly against the validity of such a sale. (*Wheeler* v. *Collier*, 1 *Mood. & Malk.* 123).

"In a late case, upon a sale by the Crown of an estate seized under an extent, it was stipulated, that, 'on the part of the Crown, Mr. E. Driver should be at liberty to make one bidding, but no more, and if the highest bidder, the sale to be void;" and a puffer was employed at the auction by Mr. Driver, the agent for the Crown; the court held, that the sale was not binding upon the purchaser. (*Rex* v. *Marsh*, 3 *Young & J.* 331; and see *Crowder* v. *Austin*, 3 *Bing.* 368; 11 *Moo.* 283). We cannot fail to perceive, that in this last case the condition was pregnant with a negative, that no puffer should be employed. Mr. Driver was there, not simply as the auctioneer, but as the known person, to protect at any moment the estate by his bidding; the other person was merely a puffer, to give to the sale the appearance of a contest; a real bidder must have been misled by the conditions.

"If the particulars or advertisements state (as they frequently do), that the estate is to be sold *without reserve*, it seems clear that the sale would be void against a purchaser, if any person were employed as a puffer, and bid at the sale. This was decided in the late case of *Meadows* v. *Tanner*, 5 *Madd.* 34. The Vice-Chancellor said, that the plain meaning of the words *without reserve*, in a particular of sale, is, that no person will be employed to bid on behalf of the vendor for the purpose of keeping up the price; and that the vendor could have no claim to the aid of a court of equity to enforce a contract against the purchaser, into which he might have been drawn by the vendor's want of faith.

"Where public notice is given, the mode least liable to objection seems to be that of reserving a bidding, or stipulating in the conditions of sale that the owner may bid once in the course of the sale. (See *Cowp.* 397; *Jervoise* v. *Clarke*, 1 *Jac. & Walk.* 399). It may here, however, be proper to observe, that buying-in an estate, especially where it is done without public notice, mostly prejudices a future sale. This was exemplified in the sale of an estate before one of the Masters in Chancery, where 23,000*l.* was *bonâ fide* bid, and the estate was bought in by the agent of the vendor; afterwards there were three other sales in the Master's office; and the consequence of the estate having been bought-in deterring others from bidding, was, that on the two first occasions no more was offered than 12,000*l.* and 6,000*l.*; and the estate finally sold for 15,000*l.* (See 6 *Ves. jun.* 629; *Wren* v. *Kirton*, 8 *Ves. jun.* 502; and see *Twining* v. *Morris*, 2 2 *Bro. C. C.* 326). As, on the one hand, a seller cannot appoint puffers to delude the purchaser, so, on the other, if a purchaser, by his conduct, de-

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Justices relieving under 19 Geo. 3, c. 56, s. 11, to grant warrants to Excise collectors to pay complainant the sums overpaid.

Return of duty, 28 Geo. 3, c. 37.

determined, and such relief given, shall grant their *warrant* (*a*) directed to the proper collector of Excise, authorizing and requiring him to allow and pay to the party so complaining and relieved, out of the duties on sales at auction which shall next come to the hands of such collector, the full amount of such payment as shall be so made out before them to have been overpaid."

But by the 28 Geo. III. c. 37, s. 19, after reciting the 19 Geo. III. c. 56, and that it was amongst other things enacted, that, from and after the 5th day of July, 1779, if any sale by auction of any estate, goods, or chattels should be rendered void by reason that the person for whose benefit the same was sold had no title to the same, or no right to dispose thereof, then and in every such case it should and might be lawful for the auctioneer who paid the duty for the thing so sold, or for the person for whose benefit the same was so sold, to lay his, her, or their complaint before the commissioners of Excise, or justices of the peace within whose jurisdiction respectively such sale was made; and the said commissioners of Excise or justices of the peace respectively, upon such complaint to them made, by or on behalf of such auctioneer, or by or on behalf of the person for whose benefit the same was sold, should and were required to hear and determine all such complaints, and examine witnesses upon oath, which should be produced, as well on the behalf of the party making such complaint, as on the behalf of all and every other party and parties, which oath they had thereby power to administer; and thereupon, or by other due proof, to relieve the party so complaining of so much of his, her, or their respective payments as should be made out before them to have been overpaid: and that it is expedient to ascertain the time within which such complaint should be so laid, so as to entitle the party complaining to relief: it is enacted, "That, in order to entitle the party complaining to relief, all such complaints shall be laid within twelve calendar months after such

Complaints of sales by auction being rendered void, to be made in a year if they be rendered void in that period, or else in three months after the discovery.

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ter other persons from bidding, the sale will not be binding. Thus, where upon a sale by auction of a barge, a bidder addressed the company present, saying he had a claim against the late owner, by whom he said he had been ill-used, whereupon no one offered to bid against him; but the auctioneer refusing to knock down the property to a single bidding, a friend of the bidder's bade a guinea more, and the first bidder then made a second and higher bidding, amounting, however, to only one-fourth of the prime cost of the barge; it was held that there was no legal sale. (*Fuller* v. *Abrahams*, 3 *Brod. & Bing.* 116; 6 *Moore*, 316)."

Form of warrant.

(*a*) Form of warrant to repay the auction-duty where a sale becomes void for defect of title, pursuant to stat. 19 Geo. III. c. 56, s. 11.

County of } *To the collector of Excise for the* *collection for the time*
to wit. } *being.*

Whereas complaint hath been made before us whose names are hereunto subscribed, two of his Majesty's justices of the peace, acting in and for the said county, by A. B., auctioneer, that an estate at , in the said county, was sold on the day of last, by auction, for the benefit of S. T., and the duty of Excise arising from such sale, amounting to l., hath been paid to you, the said collector of Excise, for the collection aforesaid: And it hath been since discovered, that the said S. T. hath no title or right to dispose of the same estate, or any part thereof, the selling of the premises having this day been made to appear to us the said justices, by the bills of the said A. B., the auctioneer, and the said S. T.. And this complaint having been made within one year after sale, or within three months after discovery was made that the said S. T. had no right to dispose of the said estate, or any part thereof. These, are, therefore, to authorize and require you, the said collector of Excise as aforesaid, to repay to the said A. B., auctioneer as aforesaid, the said sum of l., so paid by him to you as aforesaid; and for your so doing, this shall be unto you a sufficient warrant. Given under our hands and seals this day of , in the year of our Lord .

sale, if the sale shall be rendered void as aforesaid within that time, or if the sale shall not be rendered void as aforesaid within that time, then such complaints shall be laid within three months after the discovery of the person for whose benefit any such estate, goods, or chattels was or were sold, having no title to the same, or no right to dispose thereof; and no such complaint shall be laid, or any relief given thereupon, unless such complaint shall be laid within the time hereinbefore in that behalf prescribed (*a*)."

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Levying forfeiture.

Finally, by the 19 Geo. III. c. 56, s. 18; 43 Geo. III. c. 130, s. 2, and 55 Geo. III. c. 30, s. 9, "all fines, penalties, and forfeitures shall be sued for, recovered, or mitigated as by the laws of Excise directed, or sued for in the courts at Westminster; and be distributed (all necessary charges first deducted), half to the king, and half to him that shall sue." See general act 7 & 8 Geo. IV. c. 53, *ante*, 617 to 635.

Miscellaneous cases as to auctioneers and sales by auction.

Miscellaneous Cases as to Auctioneers and Sales by Auction.]—A cabinet-maker, residing at Leicester, and having a shop there, sent goods to Ashby-de-la-Zouch in a cart, which he accompanied on foot part of the way, and then went to Ashby-de-la-Zouch by the mail, where he employed an auctioneer and sold the goods by auction. Held, that he was a trading person, travelling from town to town, within the statute 50 Geo. III. c. 41, s. 7 (*b*).

It is not necessary in an information for penalties under the statute 50 Geo. III. c. 41, s. 7, to state that the defendant sold by auction, &c. by opening a room or shop, and exposing to sale his goods, &c. by retail (*c*).

A sale by auction by assignees of a bankrupt of the absolute interest in an estate in fee which is in mortgage, is not liable to the auction duty (*d*).

It is by no means unusual in construing a remedial statute to extend the enacting words beyond their natural import and effect, in order to include cases within the same mischief (*e*).

The employment of a puffer at a sale by auction of property seized under an extent by an agent of the crown, to whom a bidding is reserved by the conditions of sale, vitiates the sale (*f*).

The misconduct of the purchaser does not preclude him from objecting to the employment of a puffer at a sale by auction (*g*).

Quere, Whether a sale by auction by the assignees of the absolute interest in fee of an estate of the bankrupt in mortgage is or is not liable to the auction duty (*g*).

(3). Bricks and Tiles (*h*).

[2 & 3 Vict. c. 24: 3 Vict. c. 17.]

(3). *Present duties on bricks.*

The present duties, &c. upon bricks (*i*) are according to the provisions of the following enactment of the 2 & 3 Vict. c. 24, but are also liable to the additional duty of £5 per cent. imposed by the 3 Vict. c. 17.

Duties, 2 & 3 Vict. c. 24.

By the 2 & 3 Vict. c. 24, after reciting that it is expedient to repeal

(*a*) See also 19 Geo. III. c. 56, s. 11; 51 Geo. III. c. 95, s. 1; 38 Geo. III. c. 54, s. 3.

(*b*) *Attorney-General* v. *Woolhouse*, 1 *Y. & J.* 463.

(*c*) *Ibid.*

(*d*) *Rex* v. *Winstanley*, 2 *Y. & J.* 124.

(*e*) *Dean and Chapter of York* v. *Middleborough*, 2 *Y. & J.* 196.

(*f*) *Rex* v. *Marsh*, (upon an extent), 3 *Y. & J.* 331.

(*g*) *Rex* v. *Winstanley*, 2 *Y. & J.* 126.

(*h*) By the 3 & 4 Will. IV. c. 11, (17th May, 1833), all the several duties of Excise payable upon *tiles* made in Great Britain, or brought from Ireland into Great Britain, and all drawbacks of Excise for the exportation of the same to foreign parts, or their removal from England to Ireland, are repealed; excepting the arrears of duties, penalties, and payments of drawbacks on shipments before the commencement of the act.

(*i*) See 3 Geo. IV. c. 72, s. 27, as to remission of duty on materials for rebuilding churches.

(3). *Bricks.*

2 & 3 Vict. c. 24.

Repeal of duties and drawbacks, and the acts for collecting them.

the duties and drawbacks of Excise on bricks, and to grant other duties and drawbacks in lieu thereof, and to consolidate and amend the regulations for the securing and collecting the said duties, and claiming and paying the said drawbacks, it is enacted, "That from and after the commencement of this act all the duties and drawbacks of Excise on bricks, and the several acts and parts of acts of Parliament following; (that is to say), an act passed in the second session of Parliament in the twenty-fourth year of the reign of his late Majesty King George the Third, intituled 'An Act for granting to his Majesty certain Rates and Duties upon Bricks and Tiles made in Great Britain, and for laying additional Duties on Bricks and Tiles imported into the same;' an act passed in the twenty-fifth year of the reign of his said late Majesty King George the Third, intituled 'An Act to explain and amend an Act made in the twenty-fourth year of the reign of his present Majesty, intituled 'An Act for granting to his Majesty certain Rates and Duties upon Bricks and Tiles made in Great Britain, and for laying additional Duties on Bricks and Tiles imported into the same;'' an act passed in the thirty-fourth year of the reign of his said late Majesty, intituled 'An Act for granting to his Majesty certain additional Duties on Bricks and Tiles made in or imported into Great Britain;' so much of an act passed in the forty-third year of the reign of his said late Majesty, intituled 'An Act to repeal the Duties of Excise payable in Great Britain, and to grant other duties in lieu thereof,' as grants any duty or drawback on bricks, or relates to the collection or management of such duty; so much of an act passed in the forty-fifth year of the reign of his said late Majesty, intituled 'An Act for granting to his Majesty several additional Duties of Excise in Great Britain,' as grants any duty or drawback on bricks, or relates to the collection or management of such duty; and so much of an act passed in the seventh year of the reign of his late Majesty King George the Fourth, intituled 'An Act to amend several Laws of Excise relating to Bonds on Excise Licences in Ireland, Tiles and Bricks for draining, Oaths on Exportation of Goods, Permits for the removal of Tea in Ireland, Size of Casks in which Spirits may be warehoused in Scotland and Ireland, the Allowance of Duty on Starch and Soap used in certain Manufactures, and the Repayment of Money advanced by Collectors of Excise for Public Works in Ireland,' as relates to the duty on bricks, shall be and the same are hereby repealed, save and except so far as the same repeal any former act or part of any act: provided always, that any of the said duties which shall have been charged and incurred, and any arrear thereof, and any fine, penalty, or forfeiture which shall have been incurred, and any drawback which shall be payable in respect of any bricks removed or exported before the commencement of this act, shall and may be sued for, recovered, levied, and paid as if this act had not been passed."

24 Geo. 3, c. 24, sec. 2.

25 Geo. 3, c. 66.

34 Geo. 3, c. 15.

43 Geo. 3, c. 69.

45 Geo. 3, c. 30.

7 Geo. 4, c. 49.

Proviso as to arrears and fines.

New duties and drawbacks.

Sect. 2. "That, in lieu of the said duties and drawbacks hereby repealed, there shall be raised, levied, collected, and paid, the duties and drawbacks following (*a*); (that is to say,)

	£	s.	d.
For and upon every thousand bricks, of a size not exceeding one hundred and fifty cubic inches each brick, which shall be made in Great Britain, or which shall be brought from Ireland into Great Britain, a duty of	0	5	10
For and upon every thousand of bricks, exceeding the foregoing size, which shall be made in Great Britain, or which shall be brought from Ireland into Great Britain, a duty of	0	10	0
For all bricks made in Great Britain on which the duties imposed			

(*a*) To these duties must be added the additional duty of 5*l.* per cent. imposed by 3 Vict. c. 17.

in respect thereof shall have been charged, and which shall be duly removed to Ireland or exported to foreign parts as merchandize, a drawback of (*a*) . . . . . The Duties paid."

2 & 3 Vict. c. 24.

Sect. 3. "That the said duties and drawbacks shall be under the management of the commissioners of Excise, and shall be charged, raised, levied, sued for, collected, and applied, and paid and accounted for, in the same manner as other duties and drawbacks under the management of the said commissioners, and under the provisions of this act, and the general or special provisions, clauses, enactments, regulations, pains, penalties, and forfeitures contained in any act or acts relating to the collection and management of the revenue of Excise."

Duties and drawbacks to be under the management of commissioners of Excise.

Sect. 4. "That all and every person who shall make or manufacture any bricks within Great Britain shall, before he shall begin to make or prepare any such bricks, make a true and particular entry in writing, signed by such maker of bricks, or by each such maker in case of partnership, and setting forth his or their place or places of abode, of every field, shed, workhouse, room, or other place where such bricks are intended to be made or prepared for making, by delivering such entry to the officer of Excise in whose survey his field, shed, workhouse, room, or other place shall be situated; and in default thereof such person shall forfeit for every unentered field, shed, workhouse, room, or other place, one hundred pounds, together with all bricks made or preparing for making found therein."

Brickmakers to make entry with Excise of their brick fields, &c.

Sect. 5. "That it shall be lawful for any officer of Excise at all times, upon his request, to enter into any field, shed, workhouse, room, or other place made use of by any maker of bricks for the making or preparing of any bricks, and to examine and inspect every such field, shed, workhouse, room, or place, and every kiln, stove, or clamp thereon or therein, and to examine, and, by counting, measuring, or otherwise, to take an account of all bricks, and the dimensions thereof, made or manufactured or making or preparing by any such maker; and every maker of bricks into whose field, shed, workhouse, room, or other place any officer of Excise shall, on his request, be hindered or prevented from entering, shall forfeit one hundred pounds."

Power for officers of Excise to enter brick-fields and take an account of bricks.

Sect. 6. "That all bricks shall be from time to time taken an account of and charged with duty by the officer of Excise whilst such bricks shall be in the operation of drying or hardening in the field, shed, workhouse, room, or place where the same shall be made or prepared, or placed to dry and harden after being turned out of the mould or otherwise made into shape, and before being removed to the kilns or clamps for burning; and every maker of bricks who shall by himself or his workmen, molest or hinder any officer of Excise in examining or taking an account of the number, kind, or dimensions of such bricks in that or in any other stage of the operation of preparing, making, or finishing such bricks, shall forfeit fifty pounds."

When bricks are to be charged with duty

Sect. 7. "That every officer of Excise shall and he is hereby required, in charging the duties upon bricks, to allow to the respective makers thereof ten bricks in every one hundred of such bricks, which such officer shall charge upon the respective makers thereof, when charged in the field, shed, workhouse, room, or other place where placed to dry or harden before burnt, which allowance shall be in full for all waste, losses, or damages whatever."

In charging duty on bricks 10 per cent to be allowed for waste.

Sect. 8. "That all bricks whilst in the operation of drying or hardening in the field, shed, workhouse, room, or place where made or prepared, or placed to dry and harden, shall be placed, disposed, and arranged in such manner and form as that the officer of Excise may

Bricks to be placed in such form that officer may readily and securely take an account of

(*a*) 3 Vict. c. 17, s. 4; on all goods entitled to drawback on exportation or removal, which shall be exported, &c., after August, 16, 1840, an additional drawback of 5*l.* per cent. is given.

(3). *Bricks.*

2 & 3 Vict. c. 24.

them; and penalty for placing them irregularly.

readily and securely take an account thereof; and every maker of bricks who shall place, dispose, or arrange, or cause to be placed, disposed, or arranged any such bricks in any irregular or unusual manner, so as to render it difficult or insecure for the officer of Excise to take an account thereof, or who shall practise or endeavour to practise any art, device, or contrivance by which any officer of Excise may be deceived or prevented from obtaining a true account of any bricks, shall forfeit fifty pounds."

Mould to be provided for determining size of irregular shaped bricks, and whether liable to higher or lower rate of duty.

Sect. 9, after reciting that bricks may be made of such a shape that it may be difficult to ascertain with accuracy the true cubical contents thereof, whereby doubts or disputes may arise whether such bricks are subject to the higher or to the lower rate of duty imposed by this act, enacts, "That every maker of bricks shall provide, to the satisfaction of the supervisor of Excise, a mould adapted and proper, and similar to the moulds in ordinary use by such maker, for forming and turning out a brick ten inches long, three inches thick, and five inches wide; which mould, when approved of by the supervisor of Excise, shall be stamped or branded by him with the word 'Excise,' and shall be delivered into the custody of such maker, to be by him kept for the use of the officer surveying such maker of bricks; and if any dispute shall arise as to whether any bricks, the cubical contents of which may be difficult to ascertain, are of a greater size than one hundred and fifty cubic inches, and so subject to the higher rate of duty, the officer of Excise shall take indifferently from the quantity of bricks the size whereof shall be disputed, three bricks, and shall press the clay composing each of such three bricks into the said mould and turn the same out as a brick; and if upon such three trials any two of such bricks, or the clay composing the same respectively, shall not be more than sufficient to fill such mould, and form a brick of the dimensions of ten inches long, three inches thick, and five inches wide, the whole of such bricks shall be deemed and taken to be bricks not exceeding one hundred and fifty cubic inches, and subject to the lower rate of duty; but if any two of such bricks, or the clay composing the same respectively, shall be more than sufficient to fill such mould, so that a larger brick than of the dimensions aforesaid would be produced if the whole of such brick or the clay composing the same were pressed into a mould of sufficient capacity to receive the whole of such brick or clay, then the whole quantity of the bricks in dispute shall be deemed and taken to be bricks exceeding one hundred and fifty cubic inches, and subject to the higher rate of duty, and shall be charged with duty accordingly."

The pattern mould to be kept securely, and delivered to officer on demand; and trader and his workmen to assist officer in using it, if required.

Sect. 10. "That every such mould so approved of by the supervisor of Excise, and stamped or branded with the word 'Excise,' shall be kept safely and securely by the maker of bricks into whose custody the same shall be delivered, and shall at all times be produced to any officer of Excise demanding the same; and every maker of bricks who shall injure or damage any such mould, or alter the dimensions thereof, or who shall refuse or neglect at any time to produce the same to any officer of Excise on demand, or to suffer or allow any such officer to use the same, or who shall obstruct, oppose, or hinder any officer of Excise from or in using the same, or who shall not, by himself or his workmen, if required, aid and assist any officer in using the same, shall forfeit twenty pounds."

Bricks not to be removed to kiln or clamp for burning until charged with duty.

Sect. 11. "That every maker of bricks who shall remove, take, or carry, or cause to be removed, taken, or carried, to the kiln, clamp, or other place for burning, any bricks from the field, shed, workhouse, room, or place where such bricks shall be placed to dry and harden before the same shall have been taken account of and charged with duty by the proper officer of Excise, shall forfeit fifty pounds; and all bricks so removed, taken, and carried to the kiln, clamp, or other place for burning shall also be forfeited."

Penalty and for-

Sect. 12 provides and enacts, "That no maker of bricks shall be sub-

ject to the said penalty or forfeiture for removing bricks to the kiln, clamp, or other place for burning, if the proper officer of Excise shall have failed to attend and take an account of such bricks, on due notice given to him for that purpose three days before such removal, and if such maker shall on the next visit or survey of the officer of Excise deliver to such officer an account of the number and sizes of the bricks so removed."

Forfeiture not incurred if the officer shall not attend upon notice and maker gives an account.

Sect. 13. "That every maker of bricks shall at all times keep all such bricks as shall not have been taken account of, and charged with duty by the proper officer of Excise, separate and apart from all other bricks which shall have been taken account of and charged with duty, on pain of forfeiting twenty pounds."

Bricks not charged with duty to be kept separate from charged bricks.

Sect. 14. "That every maker of bricks who shall fraudulently convey away, hide, or conceal, or cause to be conveyed away, hidden, or concealed, any bricks, with intent to evade the duty thereon, or any part thereof, shall, over and above all other penalties, forfeit one hundred pounds, together with all the bricks so conveyed away, hidden, or concealed."

Penalty on concealing bricks to evade duty.

Sect. 15. "That every officer of Excise under whose survey any maker of bricks shall be, or any other officer who shall be appointed so to do, shall from time to time, at the expiration of every six weeks, or at such other times as the commissioners of Excise shall direct, make out and deliver to the collector of Excise, or to such person as the commissioners of Excise shall appoint to receive the same, an account or return in writing of the number of bricks made by such maker, and for which he shall have become chargeable with duty in such preceding six weeks or period, and of the duty payable thereon, according to the number and the respective sizes of such bricks, and shall also leave a copy of such account or return with such maker; and the account or return of such officer shall be a charge on every such maker of bricks, who shall pay and clear off the duty appearing by such return to have become due within six weeks after such account or return shall have been made, or in default thereof shall forfeit double the amount of such duty."

Officer at end of every six weeks to make out a return of duty, which is to be paid in next six weeks.

Sect. 16. "That all bricks of whatever form and in what manner soever made, whether by being pressed in a mould and turned out or made into shape in any other manner, shall be deemed and taken to be bricks within the meaning of this act, and shall be chargeable with the duties, and the maker thereof subject to the regulations by this act imposed and provided."

All bricks to be within provisions of this act.

Sect. 17, reciting, that in order to prevent the duties hereby imposed from being evaded by bricks denominated tiles, enacts, "That nothing shall be deemed or taken to be a tile which shall not, when turned out of the mould (except tiles for covering houses or buildings or draining lands) be a perfect square, or which shall when so turned out be of greater thickness in any one part than one inch and seven tenths of an inch if under eight inches square, or of greater thickness in any one part than two inches and a half if more than eight inches square, or which shall have any incisions made therein so as to allow of being easily separated or divided after being burned: provided always, that it shall be lawful for the commissioners of Excise to determine that tiles made otherwise than square shall not be considered as bricks chargeable with duty, on being satisfied that the same are intended to be used solely as tiles."

For preventing bricks being passed under denomination of tiles.

Sect. 18, reciting, that it is expedient to exempt from the duties by this act imposed bricks made for the sole purpose of draining wet and marshy land, enacts, "That it shall be lawful for any person to make bricks for the sole purpose of draining wet and marshy lands, without being charge or chargeable with any duty for or in respect of such bricks, all such bricks being in the making thereof stamped or moulded with the word 'drain' in or near the centre of the surface of such bricks, in so

Bricks may be made duty free for draining wet and marshy land.

(3). *Bricks.*

2 & 3 Vict. c 24.

plain and distinct a manner that the same may be easily and clearly legible to any officer of Excise or other person examining the same both before and after such bricks shall have gone through the process of burning and become fit for use: Provided always, that it shall not be lawful for any person to employ or make use of any such bricks for any other purpose than in draining wet and marshy lands, and in constructing the necessary drains, gouts, culverts, arches, and walls of the brickwork proper and necessarily required for effecting and maintaining the drainage of such lands; and every maker of such bricks or other person who shall sell or deliver or use or employ any brick with the word 'drain,' so stamped or moulded thereon for any other purpose than as aforesaid shall forfeit fifty pounds."

Entry to be made of and duty paid on bricks brought from Ireland into Great Britain.

Sect. 19. "That the proprietor or consignee of any bricks removed from Ireland into Great Britain shall, on the arrival of the ship or vessel at the port or place into which the same shall be brought, make due entry with the collector or other officer of Excise appointed to receive the same at such port or place of such bricks on board such ship or vessel, setting forth the number and sizes of such bricks, and shall pay the duties on such bricks; and if within twenty-four hours after the arrival of any ship or vessel, due entry of any bricks on board thereof brought from Ireland into Great Britain shall not be made, or if any such bricks shall be removed from the quay, wharf, or place where landed before the full duties thereon shall be fully paid, all such bricks shall be forfeited, and may be seized by any officer of Excise or Customs; and every person who shall remove or aid or assist in removing any such bricks before the full duties thereon shall have been duly paid shall forfeit one hundred pounds."

Notice to be given and bond entered into for shipping bricks to Ireland or foreign parts on drawback.

Sect. 20. "That every person intending to remove to Ireland or to export to foreign parts as merchandize any bricks on drawback shall, by himself or his agent, give to the export officer of Excise, or officer acting as such, at the port of exportation, a notice in writing of his intention to ship such bricks twelve hours at least before such shipment shall be made, in which notice shall be specified the number of bricks to be shipped and the sizes thereof, with the rate and amount of the duty paid, and of the drawback claimed thereon, and the value of such bricks for home consumption, and shall also specify the time of shipment, with the name of the ship and master thereof, and the quay or place where such vessel is then lying, and from whence the said bricks are to be shipped, and the port or place to which such bricks are to be removed or exported; and the person intending to remove or export such bricks shall also, by himself or his agent, make a declaration before the export officer of Excise, or officer acting as such, under the provisions of an act passed in the fifth and sixth years of the reign of his late Majesty king William the Fourth, intituled, 'An Act to repeal an Act of the present session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute Declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial Oaths and Affidavits;' and to make other Provisions for the Abolition of unnecessary Oaths,' that to the best of his knowledge and belief the full duties of Excise have been charged and secured on all the said bricks, and shall also give bond with one or more sufficient surety or sureties, to be approved of by the officer appointed by the commissioners of Excise, to take such bond in treble the value of the drawback, conditioned that the said bricks shall with all convenient speed be shipped, and removed and exported, and shall not be unloaded, unshipped, or relanded, or put on board any other ship or vessel in Great Britain, shipwreck or other unavoidable accident excepted; and such notice having been given and declaration made as aforesaid, and such security having been entered into, the officer of Excise receiving the same shall write his name on the said shipping notice as a certificate of the requisites afore-

5 & 6 Will. 4, c. 62.

said having been complied with, and shall transmit and forward the said notice, with his name written thereon, to the proper officer of customs at the port whose duty it may be to attend the shipping of such goods."

(3). *Bricks.*

2 & 3 Vict c. 24.

Sect. 21. "That the officer of Customs attending on the vessel in which the said bricks are to be shipped, and to whom the said shipping notice shall be transmitted, shall see the said bricks shipped, and shall take, or cause to be taken in his presence, an account of the number of such bricks which may be shipped, and examine the same, or as many thereof as he shall deem necessary, to ascertain that the sizes thereof correspond with the shipping notice; and such officer of Customs having seen the said bricks, or as many of them as the vessel may be capable of receiving, duly taken account of and shipped, shall certify such shipment, with the number of bricks shipped and the sizes thereof, on the said shipping notice, and shall return the same to the export officer of Excise, or officer acting as such; and such export or other officer, having received back the said notice with the said certificate thereon, shall deliver to the exporter, or his agent, a debenture for the payment, in six weeks from the time of shipment, of the amount of drawback on the number of bricks shipped according to the certificate of the officer of Customs: Provided always, that in case the whole quantity of bricks of which notice shall have been given shall not be shipped, so that a less amount of drawback will be payable than stated in the shipping notice, the officer of Excise who shall have received the bond shall, in the margin thereof or by indorsement thereon, state the real amount of drawback to be payable, and in such case treble the amount of such real drawback shall be the penalty of the bond."

Bricks to be shipped in presence of officer of Customs, who is to take an account of them and certify the shipment, and debenture then to be granted.

Sect. 22 provides and enacts, "That no debenture for the payment of drawback on any bricks removed to Ireland, or exported to Guernsey, Jersey, Alderney, or the Isle of Man, shall be paid, until a certificate shall be produced of the due landing thereof under the hand of the chief officer of Customs of the port in Ireland or of the said islands respectively."

Debenture not to be granted on shipments to Ireland, &c. until landing certificate produced.

Sect. 23. "That no drawback shall be allowed or payable on any bricks having the word 'drain' stamped or moulded thereon, or on any bricks which shall not be sound and unbroken, and well and perfectly made and manufactured, and worth at least the duties of Excise charged thereon if sold for home consumption."

Drawback not to be allowed on drainage or on broken bricks.

Sect. 24. "That every person who shall produce to any officer of Excise or Customs to be shipped for removal to Ireland, or exportation on drawback, any bricks not entitled to drawback under the provisions of this act, or who shall ship for removal to Ireland or exportation on drawback any such bricks, or who shall fraudulently deposit or remove any bricks, or use any device or contrivance with intent unduly to obtain any drawback, or any higher amount of drawback than he would otherwise be entitled to, shall, over and above all other penalties which he may thereby incur, forfeit treble the amount of the drawback sought to be obtained, or one hundred pounds, at the election of the commissioners of Excise; and all such bricks shall be forfeited, and may be seized by any officer of Excise or Customs."

Penalty on fraudulently endeavouring to obtain drawback.

Sect. 25. "That this act shall commence and take effect from and after the twenty-second day of August one thousand eight hundred and thirty-nine."

Commencement of act.

Calicoes.

Calicoes.

The Excise duties and drawbacks upon printed calicoes, linens, and stuffs, were repealed by the 1 Will. IV. c. 17, (15th March, 1831).

(4). Candles.

(4) *Candles.*

By the 1 & 2 Will. IV. c. 19, it is enacted by sect. 1, "That from and after the first day of January, 1832, all the duties of Excise payable upon candles made in Great Britain or made in Ireland, and re-

After 1st January, 1832, all duties and drawbacks on candles to cease.

(4). *Candles.* moved into Great Britain, and all duties upon licences required to be taken out by any maker of candles in Great Britain and Ireland, and all drawbacks for the removal of any candles from Great Britain to Ireland, or on the exportation of any candles from Great Britain, shall be repealed, cease, and determine, and be no longer paid or payable; save and except as to any arrear of the said duties which shall have become due, or of any penalty or forfeiture in respect thereof which shall have been incurred, before the said first day of January, 1832, or the payment of any drawback which shall have become payable in respect of any candles removed from Great Britain to Ireland, or exported, before the said first day of January, 1832."

Sect. 2. "Makers of candles for sale shall be subject and liable to the regulations of 59 Geo. III. c. 90, as melters of tallow, grease," &c.

Sect. 3 allowed candles, not intended to be sent into consumption until after 1st January, 1832, to be made and secured free of duty.

Sect. 4 enacted, "that if any candles made as duty-free should be sent into consumption prior to 1st January, 1832, or the regulations of the Excise should not be complied with, the maker should pay duty on all the candles made by him."

Sect. 5 pointed out the manner of proceeding, in case any maker of candles, having made and stored candles duty-free, should, previously to 1st January, 1832, apply to take them out on payment of duty.

CHOCOLATE, see *tit.* "*Coffee,*" &c.

COCOA-NUTS, see *tit.* "*Coffee,*" &c.

(5) *Coffee, Tea, Chocolate, and Cocoa-nuts.*

(5). COFFEE, TEA, CHOCOLATE, AND COCOA-NUTS.

[10 Geo. I. c. 10; 11 Geo. I. c. 30 and c. 33; 12 Geo. I. c. 28; 4 Geo. II. c. 14; 18 Geo. II. c. 26; 12 Geo. III. c. 46; 17 Geo. III. c. 29; 41 Geo. III. c. 91; 43 Geo. III. c. 129; 49 Geo. III. c. 80; 58 Geo. III. c. 76; 59 Geo. III. c. 53; 3 Geo. IV. c. 53; 6 Geo. IV. c. 81 and c. 118; 9 Geo. IV. c. 44; 3 & 4 Will. IV. c. 101.]

"The import duties on coffee, tea, cocoa, chocolate, and pepper were formerly under the management of the commissioners of Excise, and the dealers in those articles were then required, besides taking out licences, and making entry of their premises, to obtain permits for the removal of the commodities, exceeding a specific quantity; and there were various regulations for surveying and keeping account of the stocks of such traders, &c. The duties on coffee, cocoa, and pepper were transferred to the Customs' department in 1825, and the laws requiring permits for coffee and cocoa were repealed by 9 Geo. IV. c. 44, s. 5; but the regulations of Excise for securing the respective duties on those articles, as well as on tea, (or rather for preventing fraudulent practices therein), were continued in force and extended to the whole of the United Kingdom, by the act last cited, (9 Geo. IV. c. 44). By 3 & 4 Will. IV. c. 101, s. 5, the importation of tea was allowed to be transferred to and placed under the management of the Customs, with a proviso, that, 'nothing herein contained shall extend to alter or affect any law of Excise relating to licences for the sale of tea, or relating to permits for the removal of tea, or otherwise to the internal management of tea by the commissioners of Excise, after the duties of importation shall have been paid, and after the same has been delivered out of the charge of the officers of Customs.' By s. 7, the Treasury was authorized to discontinue the practice of requiring permits for the removal of tea, and to make other regulations in lieu thereof; and by a Treasury warrant, made in pursuance of this section, and issued by the board on 1st March, 1836, permits were discontinued accordingly. The stock accounts of dealers in coffee, &c., have not been taken since 26th July, 1828, (see *Board's order* of that date); and by *Board's order* of 11th

June, 1839, the examination of traders' stocks of tea, coffee, and pepper was wholly discontinued" (*a*).

(5). *Coffee, Tea, &c.*

As to licences which are still required to be taken out by dealers, see *ante*, p. 644.

Licences to be taken out by dealers.

The 9 Geo. IV. c. 44, intituled "An Act to provide for the execution, throughout the United Kingdom, of the several Laws of Excise relating to Licences and Survey on Tea, Coffee, Cocoa, Pepper, Tobacco, Snuff, Foreign and Colonial Spirits and Wine, notwithstanding the Transfer to the Customs of the Import Duties on any of such Commodities," (15th July, 1828); after reciting that the duties of Excise payable in Great Britain and Ireland respectively, at and immediately before the commencement of the year one thousand eight hundred and twenty-five, upon the importation into Great Britain and Ireland respectively of coffee, cocoa, pepper, tobacco, snuff, foreign and colonial spirits and wine, have been repealed, and in lieu thereof duties of customs have been granted and made payable on the importation of such commodities respectively into any part of the United Kingdom: And that dealers in and sellers of coffee, cocoa, pepper, tobacco, snuff, foreign and colonial spirits and wine, and manufacturers of tobacco and snuff, were subject, under several acts relating to the revenue of Excise in force previous to the granting of the said duties of customs, and previous to the year one thousand eight hundred and twenty-five, to the payment of duties of excise upon licences, and to the survey of officers of Excise, and to regulations relating to such survey, and to the respective stocks of such commodities in the possession of such traders, and to the granting of permits for the removal of such commodities respectively, under and according to the several provisions and regulations, penalties and forfeitures, contained in the said several acts relating thereto respectively: And that doubts have arisen how far such regulations, or the jurisdiction and management, powers or authorities of the commissioners and officers of Excise in the matters aforesaid, are or may be applicable or remain in force; declares and enacts "That all acts relating to the revenue of Excise in force at and immediately before the year one thousand eight hundred and twenty-five, with respect to dealers in and sellers of coffee, cocoa, pepper, tobacco, snuff, foreign and colonial spirits and wine, and manufacturers of tobacco and snuff respectively, and with respect to the taking and keeping account of and survey of all stocks of such commodities respectively in the possession of such traders respectively, and to the manufacture of tobacco and snuff, and with respect to the granting of permits for the removal of such commodities as aforesaid respectively, have remained and continued, and are and shall be and remain and continue in full force and virtue, as laws relating to the revenue of Excise (save and except so far as any of such act or acts, or any part or parts thereof, may have been repealed or altered by any subsequent act relating to the Excise passed for that purpose), and the said acts shall and may be executed and carried into effect in all particulars (save and except as to the landing and shipment of the said commodities respectively, and the collection and payment of the duties of customs on the said respective commodities, and the lodging of such commodities in warehouses without payment of duty), by the said commissioners of Excise and their officers; and that all and singular the powers and authorities, rules, regulations, provisions, and directions (except as aforesaid), in anywise relating to the licences to be taken out by the dealers in and sellers of such commodities respectively, and to the survey by the Excise officers of such dealers and sellers, and of their respective stocks of such commodities respectively, and to the granting of all permits (except as hereinafter mentioned) for the removal of such commodities respectively contained in any act or acts relating to the said commodities

Excise laws in force before 1825, relating to dealers in and manufacturers of certain exceseable articles, shall continue in force notwithstanding any thing in any acts relating to the Customs.

(*a*) *Bateman on the Excise Laws*, p. 438.

(5). *Coffee, Tea, &c.*

respectively, and the jurisdiction and management thereof by the commissioners and officers of Excise, shall and may be possessed, used, executed, exercised, and put in force by the said commissioners of Excise and their officers, to all intents and purposes whatsoever (save and except as aforesaid); any thing in any act or acts relating to the duties or revenue of Customs to the contrary in anywise notwithstanding."

All penalties and forfeitures prosecuted by order of commissioners of Excise shall be prosecuted and recovered according to 8 Geo. 4, c. 53

"Sect. 2. "That all penalties and forfeitures imposed by any act or acts relating to the revenue of Customs or Excise respectively, which by law the officers of Excise are authorized to prosecute, and which the commissioners of Excise shall order to be prosecuted, shall and may be so prosecuted, sued for, recovered, levied, mitigated, and applied, and in and by such ways, means, and methods, and in, under, and before such jurisdiction respectively, as penalties and forfeitures incurred or forfeited by reason of offences committed against any law or laws of Excise are or may be sued for, recovered, levied, mitigated, and applied by an act passed in the last session of Parliament, for consolidating and amending the laws relating to the collection and management of the revenue of Excise throughout Great Britain and Ireland; any thing in any other act or acts to the contrary thereof in anywise notwithstanding."

Tea shall not be sent to Ireland without payment of duty.

"Sect. 3. "That it shall not be lawful to send, remove, or convey any tea from Great Britain to Ireland, nor to deliver any tea out of any warehouse in Great Britain for the purpose of being sent, removed, or conveyed to Ireland, until the full duty of Excise on such tea shall have been paid and satisfied; any thing in an act made in the sixth year of his present Majesty's reign, intituled 'An Act for the warehousing of Goods,' or in an act made in the seventh year of his present Majesty's reign, intituled, 'An Act to alter and amend the several Laws relating to the Customs,' or in any other act or acts in force immediately before the passing of this act, to the contrary in anywise notwithstanding."

6 Geo. 4, c. 112.

7 Geo. 4, c. 48.

Excise laws of Great Britain relating to tea, coffee, cocoa, pepper, &c. extended to the United Kingdom.

Sect. 4. "That all and every act and acts now in force, or hereby declared to be in force as aforesaid, in England, relating to the revenue of Excise on tea, and relating to coffee, cocoa, pepper, foreign and colonial spirits and wine, shall be established, observed, executed, and put in force in and throughout the United Kingdom of Great Britain and Ireland, in the same manner, to all intents and purposes whatsoever, as heretofore in England; any thing in any act or acts to the contrary thereof in anywise notwithstanding."

Coffee not to be subject to permits.

Sect. 5, reciting, that by reason of the reduction of the duties of importation formerly payable on coffee and cocoa, it has become unnecessary to subject the same any longer to permits, enacts, "That so much of any act or acts as relates to the requiring of permits for the removal of coffee or cocoa shall be, and so much of any such act or acts as aforesaid is hereby repealed."

Cocoa-nut shells without the nuts.

By the 4 Geo. II. c. 14, s. 12, "If any person shall import any cocoa-nut shells, or husks without the nuts, the officers of the Customs, Excise, or inland duties, may seize them, with the bags, boxes, and other package; and after condemnation they shall be destroyed, or otherwise disposed of, as any three respective commissioners shall appoint; and they may reward such officer in any sum not exceeding 20*s.* per cwt."

Houses of manufacturing and sale to be *entered.*

By the 10 Geo. I. c. 10, s. 10, "Every druggist, grocer, chandler, coffee-house keeper, chocolate-house keeper, and other person dealing in coffee, tea, or cocoa-nuts, or making or selling chocolate, either by wholesale or retail, shall, before he take any of the said goods into his possession, make entry in writing of all storehouses and other places intended to be used by him for the keeping the same at the office for the division, on pain of forfeiting 200*l.*, and the said goods found therein, with the canisters, bags, vessels, and other package."

What to be a legal entry.

By the 18 Geo. II. c. 26, s. 8, "No entry of any shop, warehouse, room, or utensils for carrying on trades aforesaid shall be deemed a

legal entry, unless made in the name of the real owner of and trader in such shop; and the person who acts as visible owner of such place, or principal manager in such trade, shall be deemed the real owner and trader, and consequently liable for any stock found there, or for not making entries, or other offences."

Goods not to be offered for sale but in entered places, &c.

And by the 10 Geo. I. c. 10, s. 14, and the 12 Geo. III. c. 46, s. 6, "None of the said goods shall be offered to sale but in places entered, or in a warehouse to be approved of by the commissioners, on pain of forfeiting the same, and also 10*l.*"

By the 10 Geo. I. c. 10, s. 27, "If any person shall import any coffee, tea, or cocoa-nuts, which ought to be secured in warehouses, and shall not make due entries thereof, and bring the same into such warehouse, the same shall be adjudged to be clandestinely run and unlawfully imported, and may be seized by any officer of Customs or inland duties, and shall be forfeited, with the packages thereof, and the horses, carts, and other carriages made use of in carrying the same."

Tea unshipped in Great Britain without entry forfeited; and offenders forfeit 10*l.* for every pound of tea, or 100*l.* at election of prosecutor.

By the 58 Geo. III. c. 76, s. 3, "If any person shall import, unship, or land in Great Britain, or within the limits of any of the ports thereof, any tea, and shall not make due entries thereof, so that the duties of Customs and Excise be secured and paid, all such tea so imported shall be deemed and is hereby adjudged to be clandestinely run, and shall be forfeited, and may be seized by any officer of Customs or Excise; and the person so offending, or aiding or assisting therein, or removing, receiving, harbouring, or concealing any run tea, shall, for each and every such offence, severally forfeit and lose the sum of 10*l.* for every pound weight thereof, or the sum of 100*l.*, at the election of the attorney-general, or the person who shall sue or prosecute for the same; and no such penalty shall be mitigated by any justice or justices below one-fourth part thereof."

Who shall be a dealer in coffee, tea, and chocolate.

By the 11 Geo. I. c. 33, s. 4, "Every person who shall keep a public-house, shop, cellar, or other warehouse for selling brandy or other spirituous liquors, and shall have in his custody for his use any coffee, tea, chocolate, or cocoa-nuts, above six pounds weight, of any kind, shall be deemed a dealer in the said commodities."

No mixture in manufacturing coffee.

By the 11 Geo. I. c. 30, s. 9, "No person in roasting, or soon after roasting, or before selling, shall mix with coffee, to increase the weight, any butter, lard, grease, water, or other materials (*a*), on pain of 100*l.*; and if any dealer shall knowingly buy or sell any so mixed, he shall forfeit 100*l.*"

Penalties and forfeitures, how sued for and divided.

Sect. 39 gives the mode of suing for and recovering fines, penalties, and forfeitures, and enacts, "that one moiety of every such fine, penalty, and forfeiture shall be to the use of his Majesty, his heirs and successors, and the other moiety thereof to him or them that shall sue or inform for the same."

Dealers in coffee may roast their own coffee on making entry.

By the 49 Geo. III. c. 80, (reciting 10 Geo. I. c. 10), "It is enacted, that after the passing of this act all sellers of and dealers in coffee shall be at liberty to roast their own coffee, according to the following regulations; viz. every such seller, being desirous to roast coffee, shall, before he shall roast any coffee, make true entry in writing, at the next office of Excise, of one or more rooms for that purpose, which rooms respectively shall either be adjoining or as near as possible to the places by him entered and made use of for keeping raw coffee; and if any seller, &c. shall roast in any place whereof he shall not have made such entry, he shall, for every such offence, forfeit 50*l.*, together with all the coffee which shall at any time be found in any such place whereof no such entry shall be made: provided, that no seller, &c. who shall at any time receive into his custody or possession any unroasted coffee, less in quantity than 56lbs., except coffee returned to him by any customer for

Penalty for not making entry, 50*l.*

Dealers receiving unroasted coffee in less quantity than 56lbs. not per-

(*a*) By order of Board (31st August, 1840,) no objection is made to chicory being mixed with coffee.

(5). *Coffee, Tea, &c.*

mitted to roast coffee. Penalty, 50*l.*

If any article made to resemble coffee or cocoa be found in possession of any dealer, &c., it shall be forfeited, and dealer forfeit 100*l.*

being disliked, shall be at liberty to roast, or put in operation of roasting, any coffee; and if any seller, &c. shall, contrary to this act, roast, or put in operation of roasting, any coffee, he shall, for each offence, forfeit 50*l.*, together with all such coffee by him so roasted, &c."

And by the 43 Geo. III. c. 129, s. 5, (repealing s. 3 of 41 Geo. III. c. 91, which respected imitations of coffee), "If any burnt, scorched, or roasted peas, beans, or other grain or vegetable substance, prepared for the purpose of being an imitation of or in any respect to resemble coffee or cocoa, or to serve as a substitute for the same, or pretended by the possessor or vender thereof so to be, shall be made or kept for sale, or offered or exposed to sale, or found in the possession of any dealer in or seller of coffee or cocoa, or" [*query*, if?] "any burnt, scorched, or roasted peas, beans, or other grain or vegetable substance, not being coffee or cocoa, shall be called by the preparer, possessor, or vender thereof by the name of English or British coffee, or any other name of coffee, or by the name of American cocoa, or English or British cocoa, or any other name of cocoa, the same shall be forfeited, together with the packages, and shall be seized by any Excise officer; and the person preparing or selling the same, or having the same in his possession, or the dealer in or seller of coffee or cocoa in whose custody the same shall be found, shall forfeit 100*l.*"

Persons not being dealers in coffee may roast and sell corn, peas, beans, or parsnips.

By the 3 Geo. IV. c. 53, s. 1, after reciting 43 Geo. III. c. 129, s. 5, it is enacted, "that it shall be lawful for any person, not being a dealer in or seller of coffee or cocoa, to manufacture, deal in, and sell scorched or roasted corn, peas, beans, or parsnips, whole, and not ground, crushed, or powdered, under the licence and subject to the regulations and restrictions thereinbefore mentioned."

Entry to be made of premises, and roasted corn to be sold whole and in packages

Sect. 6. "Before any person shall begin to manufacture for sale, or deal in, or sell any such scorched or roasted corn, peas, beans, or parsnips, he shall make a true and particular entry in writing, according to the laws in respect to Excise entries of places, of every house, room, and place, and of every utensil by him made use of, or intended to be made use of, in or for the scorching or roasting or keeping of scorched or roasted corn, peas, beans, or parsnips for sale, at the office of Excise within the limits whereof such house, room, or place shall be situate, and shall be subject to the survey of the officers of Excise, in like manner as coffee-dealers; and every such person shall, as soon as any such corn, peas, beans, and parsnips has or have been scorched or roasted, put and make up the same whole, and not ground, crushed, or powdered, and unmixed with any other article or ingredient whatsoever, in packages, and stamp or mark the cover of every such package with the words, '*roasted corn, peas, beans*, or *parsnips*,' as the case may be, and with his name and place of residence; and shall not have or keep, or sell or offer to sell or deliver, any scorched or roasted corn, peas, beans, or parsnips under any other name or description whatever than scorched or roasted corn, peas, beans, or parsnips, as the case may be, or in any other state or condition than whole, and not ground, crushed, or powdered, or mixed with any other article or ingredient, or otherwise than so made up into such packages so marked, on pain of forfeiting for each offence the sum of 50*l.*, together with all the corn, peas, beans, or parsnips, and other articles or ingredients mixed or of the like kind as are mixed therewith, and also the utensils for the scorching or roasting corn, peas, beans, or parsnips, which shall at any time be found in any house, room, or place so made use of or intended to be made use of as aforesaid, and whereof no such entry shall be made, or which shall be in the possession of any such person not licensed, or had or kept by him, or sold or delivered, otherwise than as aforesaid; and the same shall be seized by any officer of Excise. Nothing herein contained shall repeal or alter the act or provisions hereinbefore recited, in any other respect, manner, or degree, than is and are expressly provided by this act."

Penalty for selling roasted corn under any other name, 50*l.* &c.

(5). *Coffee, Tea, &c.*

Sect. 7. "It shall be lawful for any person licensed to deal in cocoa, who shall first make entry of his premises, for the purpose hereinafter mentioned, at the nearest office of Excise, and who shall not be a scorcher or roaster of corn, peas, beans, or parsnips, or a dealer in or seller of scorched or roasted corn, peas, beans, or parsnips, or have in his possession any such corn, &c., to make and manufacture in such premises, and with the knowledge of the proper officer, cocoa-paste, broma, and other mixtures and preparations of cocoa, with sugar and arrow-root flour or other farinaceous powder, such arrow-root flour or other farinaceous powder not being baked, scorched, roasted, or altered from its natural state, except by being mixed with cocoa as aforesaid, and to sell such cocoa-paste, broma, or other mixture: provided (*a*) that every such person shall enclose all such cocoa-paste, broma, and other such mixtures and preparations of cocoa, as soon as the same is made, and before the same is sold, offered, or exposed for sale, or delivered, in paper sealed and stamped, or in some pot or other vessel, to which a stamp shall be affixed in such manner as the commissioners of Excise shall direct, and which stamp the commissioners of Excise shall furnish and cause to be delivered to every such person upon his request, and upon such person paying to such commissioners, for such stamps to be used, *sixpence* for every stamp to be attached to a pound weight, and *three-pence* for every stamp to be attached to half a pound weight, and *three halfpence* for every stamp to be attached to every quarter of a pound weight of all such cocoa-paste, broma, or other mixtures as herein described; and if any person shall make or manufacture any cocoa-paste, broma or other mixture or preparation of cocoa as aforesaid, without first making such entry, or shall mix with any cocoa any baked, scorched, or roasted material whatsoever, or any ingredient whatsoever, except as aforesaid, or shall keep, offer for sale, sell, or deliver any such preparation of cocoa, otherwise than in the manner and enclosed in the paper or pot, containing not less than one quarter of a pound, or more than one pound, stamped as aforesaid, or shall use any such stamp or paper a second time, or imitate or use any stamp for the purpose aforesaid which shall not have been issued by or by the order of the commissioners of Excise, or shall use any art or contrivance by which the officer surveying such premises shall be prevented or deceived in taking a true account of all such compound cocoa, broma, or other mixture of cocoa with sugar and arrow-root flour, or other unbaked, unscorched, unroasted, and undisguised farinaceous powder as aforesaid, or shall obstruct or hinder such officer in taking such account, every such person and persons in such cases respectively offending shall, for every such offence, severally forfeit the sum of 100*l*."

Persons licensed to deal in cocoa, not being a roaster of corn, may manufacture cocoa paste, and other mixtures of cocoa.

Cocoa-paste, &c. to be put up in paper or pot, and stamp affixed;

6*d*. stamp to a lb; 3*d*. for a ½ lb.; and 1½*d*. for ¼ lb.

Penalty, 100*l*.

Savings for former Excise laws.

By the 11 Geo. I. c. 30, s. 5, "That no dealer in tea, or manufacturer or dyer thereof, or pretending so to be, shall counterfeit or adulterate tea, or cause or procure the same to be counterfeited or adulterated, or shall alter, fabricate, or manufacture tea with terra japonica, or with any drug or drugs whatsoever, nor shall mix, or cause or procure to be mixed with tea any leaves, other than leaves of tea, or other ingredients whatsoever, on pain of forfeiting and losing the tea so counterfeited, adulterated, altered, fabricated, manufactured or mixed, and other thing or things whatsoever added thereto, or mixed or used therewith, and also the sum of 100*l*."

Dealers in tea, or manufacturers or dyer thereof, adulterating teas, to forfeit it and 100*l*.

By the 41 Geo. III. c. 91, s. 4, "If any commodity shall be seized as manufactured in imitation of or to resemble coffee, or to serve as a substitute for coffee, or if any action shall be brought by the owner or claimer against any officer of Excise, or any person acting in his assistance, for such seizure, the proof that the commodity so seized is not manufactured in imitation of or to resemble coffee shall lie upon the owner or claimer, by the oaths of two credible witnesses."

(*a*) By 6 Geo. IV. c. 118, s. 7, this proviso requiring the stamps to be affixed is repealed.

(5). *Coffee, Tea, &c.*

Imitations of tea.

By the 4 Geo. II. c. 14, s. 11, "If any dealer in or seller of tea shall dye, fabricate, or manufacture any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or the leaves of any other tree, shrub, or plant, in imitation of tea, or shall mix, colour, stain or dye with *terra japonica*, sugar, molasses, clay, logwood, or with any other ingredients, or materials whatsoever, or shall sell and vend, utter, or offer, or expose to sale, or have in his or their custody or possession, any such dyed, fabricated, or manufactured leaves in imitation of tea, or any such coloured, stained, or dyed leaves, or tea mixed with any of the ingredients before mentioned, or with any other ingredients whatsoever, such person or persons shall respectively, for every pound of such leaves so dyed, fabricated, or manufactured, in imitation of tea, and for every pound of such mixed, coloured, stained, or dyed leaves or tea, forfeit and pay the sum of ten pounds."

Dyeing or manufacturing in imitation of tea any leaves of tea that have been used, &c., or selling or offering to sell the same, &c.

By the 17 Geo. III. c. 29, s. 1, "If any person, whether he be a dealer in or seller of tea or not, shall dye or manufacture any sloe leaves, liquorice leaves, or the leaves of tea that have been used, or the leaves of any ash, elder, or other tree, shrub, or plant, in imitation of tea, or shall mix or colour any such leaves with *terra japonica*, copperas, sugar, molasses, clay, logwood, or any other ingredients, or shall sell or offer to sale, or have in his custody, any such leaves dyed or manufactured or dyeing or manufacturing in imitation of tea, and shall be thereof convicted upon the oath of one witness before one justice, he shall, for every pound of such leaves so dyed or manufactured, or dyeing or manufacturing, in imitation of tea, and for every pound of such mixed, stained, or dyed leaves of tea, forfeit 5*l.*; and on nonpayment thereof such justice shall commit him to the common gaol, for any time not exceeding twelve months, nor less than six, or until the penalty and charges shall be paid."

Penalty.

Penalty on persons having more than six pounds of any such leaves in their possession; except, &c.

Sect. 2. "That from and after the said 1st day of June, 1777, if any person or persons shall have in his, her, or their custody or possession, any quantity (exceeding six pounds weight) of sloe leaves, or the leaves of ash, elder, or any other tree, shrub, or plant, green or manufactured, and shall not prove, to the satisfaction of the justice or justices before whom the matter shall be heard, that such leaves were gathered with the consent of the owners of the trees, shrubs, or plants from which the said leaves were taken, and that such leaves were gathered for some other use or uses, and not for the purpose of fabricating and manufacturing the same in imitation of tea, and shall be thereof convicted, by the oath of one or more credible witness or witness, before any one or more justice or justices of the peace for the county, city, riding, division, district, or place where such leaves shall be so found, such person or persons shall respectively, for every pound of such green or manufactured leaves so found in his, her, or their custody or possession, as aforesaid, forfeit and pay the sum of 5*l.*; and upon nonpayment thereof such justice or justices shall commit the offender to the common goal of the county or place where the offence shall be committed, there to remain without bail or mainprize for any time not exceeding twelve months, nor less than six months, or until the penalty and charges shall be paid."

If any officer of Excise, &c. shall make oath before a justice that he suspects any such leaves as aforesaid are concealed, such justice may grant a special warrant for entering any place in search of the same (a).

Sect. 3. "That if any officer or officers of his Majesty's revenue of Excise, or other person or persons, shall have cause to suspect that any such leaves dyed, fabricated, or manufactured, or leaves dyeing, fabricating, or manufacturing, in imitation of tea, or leaves intended so to be dyed, fabricated, or manufactured, shall be hid, concealed, or lodged in any place whatsoever, then and in such case, upon oath made by such officer or officers, or other person or persons, before any one or more justice or justices of the peace for the county, city, riding, divi-

(a) See the 7 & 8 Geo. IV. c. 53, s. 34, *ante*, p. 673, as to when two commissioners or a justice may grant search warrants.

sion, district, or place where the same shall be so suspected to be hid, concealed, or lodged, setting forth the ground of such his, her, or their suspicion, it shall and may be lawful to and for the said justice or justices of the peace respectively, before whom such affidavit or affidavits shall be made, if he or they shall judge it reasonable, by special warrant or warrants under his or their respective hand and seal or hands and seals, to authorize and empower such officer or officers, or other person or persons, by day or by night, but if in the night-time, then in the presence of a constable, or other lawful officer of the peace, to enter into all and every such place or places where he or they shall so suspect the said dyed, fabricated, or manufactured, or other the said leaves shall be so hid, concealed, or lodged, and to seize and carry away as forfeited all such leaves so dyed, fabricated, or manufactured, or dyeing, fabricating, or manufacturing, or intended to be so dyed, fabricated, or manufactured, which he or they shall so find hid, concealed, or lodged, together with all and singular the waggons, carts, boxes, bags, tubs, or other vessels, or package, containing the same: and it shall and may be lawful to and for the said justice or justices so granting the said warrant, or any other justice or justices of the peace for the county, city, riding, division, district, or place wherein such seizure shall be made, on proof of the premises, by oath of one or more credible witness or witnesses, by warrant or warrants under his or their hand or seal, hands or seals respectively, to order the said dyed, fabricated, or other leaves so seized as aforesaid, to be conveyed to some convenient place, and there to be burnt or otherwise destroyed, and to order the said waggons, carts, boxes, bags, tubs, or other vessels or package, containing the same as aforesaid, to be forthwith sold, and the money arising by such sale, after deducting the charges of such seizure and sale, and of the burning or otherwise destroying of the said leaves, to go and be paid, one half to the informer, and the other half to the poor of the parish where the offence shall be committed: and if any person or persons whatsoever shall let, obstruct, or hinder, such officer or officers, or other person or persons having such authority as aforesaid, from entering such places where he or they shall suspect such leaves to be so hid, concealed, or lodged, or in seizing, carrying away, burning, or otherwise destroying the same, or in seizing, carrying away, or selling, the said carts, waggons, boxes, bags, tubs, or other vessels, or package, containing the same as aforesaid, the person or persons offending therein shall, for every such offence, forfeit and lose the sum of 50*l.* each, on conviction thereof, by the oath of one or more credible witness or witnesses, before one or more justice or justices of the peace for the county, city, riding, division, district, or place where such offence shall be committed; and upon nonpayment of the said forfeiture, such justice or justices shall commit the offender or offenders to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize, for any time not exceeding twelve months, nor less than six months, or until the penalty and charges shall be paid."

All leaves so found to be destroyed, &c.

Penalty on persons obstructing officers in search of leaves, &c.

Sect. 4. "Provided always, that no such green and unmanufactured leaves, so found hid, concealed, or lodged, as aforesaid, shall be burnt or otherwise destroyed, if the owner or owners thereof shall, within twenty-four hours after such seizure, prove, to the satisfaction of the justice or justices granting the said warrant for seizing such leaves, or any other justice or justices of the peace for the county, city, riding, division, district, or place where the same shall be so seized, that the said green or unmanufactured leaves were gathered with the consent of the owner or owners of the trees, shrubs, or plants from which the said leaves were taken, and that the same were so gathered for some other use or uses, and not for the purpose of dyeing, fabricating, or manufacturing, in imitation of tea, as aforesaid; and if such proof shall, within the time aforesaid, be made to the satisfaction of the said justice or justices, then

Cases in which leaves found concealed shall not be destroyed, &c.

(5). *Coffee, Tea, &c.*

the said green or unmanufactured leaves, together with the carriages, vessels, and package in which the same shall have been so seized, shall be forthwith restored to the owner or owners thereof, by order of such justice or justices."

Occupiers of houses, &c. where in such leaves shall be found, if lodged there with their consent, shall be liable to penalties of this act

Sect. 5. "That all such dyed, coloured, stained, fabricated, and manufactured and other leaves aforesaid shall be deemed and adjudged to be in the custody and possession of the occupier or occupiers of the dwelling-houses, outhouses, gardens, and lands wherein or whereon the same shall be so found hid, concealed, or lodged, as aforesaid; and such occupier or occupiers of the said dwelling-houses, outhouses, gardens, and lands, shall be liable to all the pains and penalties by this act inflicted on the person or persons having such dyed, coloured, stained, fabricated, or manufactured and other leaves in his, her, or their custody or possession, if it shall be proved, to the satisfaction of the justice or justices before whom the matter shall be heard, that such leaves were lodged in such dwelling-houses, outhouses, gardens, or lands, with the privity or consent of the said occupier or occupiers thereof."

Application of the forfeitures.

Sect. 6. "That one moiety of all and every the forfeitures hereinbefore directed to be paid in pursuance of this act shall go to the informer, and the other moiety to the poor of the parish where such offence shall be committed."

Inhabitants of parish to be admitted as evidence

Sect. 7. "*And for the more easy conviction of persons offending against this act,* that in all informations and other proceedings for any of the offences aforesaid, the evidence of the inhabitants of the parish or place where the offence shall be committed shall be taken and allowed, any law, custom, rule, order, or usage to the contrary notwithstanding."

Justices to put act in execution.

Sect. 8. "That his Majesty's justices of the peace for the respective counties, cities, ridings, divisions, districts, or places wherein any of the offences committed against this act shall be done, are hereby authorized to put this act into execution, and to administer an oath to any such credible witness or witnesses."

Convictions of offenders to be certified to next quarter sessions.

Sect. 9. "That the conviction or convictions of all and every offender and offenders against this act shall be certified, by the justice or justices of the peace before whom the same shall be made, to the next general quarter sessions of the peace, to be filed amongst the records of the said sessions; and that such conviction shall be fairly written on parchment or paper, in the following form of words (as the case shall happen), or in any other form of words to the like effect; that is to say,

Form of conviction.

Be it remembered, that on the day of , in the year , A. B. was, upon the complaint of C. D., convicted before , of the justices of the peace for , in pursuance of an act passed in the seventeenth year of the reign of his Majesty King George the Third, for [as the case shall be].
to wit.
Given under hand and seal, the day and year above written.

Conviction not to be quashed for want of form, &c.

Which said conviction shall be good and effectual in law to all intents and purposes, and shall not be quashed, set aside, or adjudged void or insufficient, for want of any form of words whatsoever; nor shall the same be liable to be removed by *certiorari* into his Majesty's Court of King's Bench, but shall be deemed and taken to be final to all intents and purposes whatsoever."

Dealer in cocoa-nuts not to dispose of less than 28 lbs. at one time;

By the 12 Geo. I. c. 28, s. 29, "That from and after the 24th day of June, 1726, no seller of, trader, or dealer in cocoa-nuts, shall in any parcel or parcels sell, deliver out, or dispose of less than the quantity of 28 pounds weight of cocoa-nuts at the least, at any one time or times; and further, that from time to time, and at all and every time and times, when such seller of, trader, or dealer in cocoa-nuts shall either sell, deliver out, or dispose of any parcel or parcels of cocoa-nuts, of 28 pounds weight or more, the party or parties so selling, delivering out, or disposing of such cocoa-nuts, shall enter or cause to be entered down an account in writing of the christian and surname and names, and place

and to enter in a book to whom all

and places of abode of the person and persons to whom, or to or for whose use, or for or upon whose account such cocoa-nuts shall be so sold, delivered out, or disposed of; and upon demand or request made by any officer or officers of and for the inland duties on chocolate, shall produce such account or accounts to such officer or officers, and shall permit him and them not only to inspect and peruse the same, but also thereout and therefrom to take an account of the name and names, place and places of abode of the person and persons to whom or for whose use, or for or upon whose account such cocoa-nuts shall be or shall have been sold, delivered out, or disposed of; on pain of forfeiting and losing the sum of 20*l.* for every pound of cocoa-nuts which shall either be sold, delivered out, or disposed of in any parcel or parcels not containing or amounting in the whole to 28 pounds of cocoa-nuts at the least, or which shall be or shall have been so sold, delivered out, or disposed of, without entering down or causing to be entered down in such account or accounts in writing as aforesaid the name and names, and place and places of abode, of the person and persons to whom, or to or for whose use, or for or upon whose account such cocoa-nuts shall be or shall have been so sold, delivered out, or disposed of; and on pain of forfeiting and losing the sum of 20*l.* every and each time and times when such seller of, trader, or dealer in cocoa-nuts shall refuse to permit such officer or officers for the said inland duties to inspect and peruse such account or accounts as aforesaid, or thereout or therefrom to take such account or accounts as aforesaid."

cocoa-nuts are sold, to be perused by officer.

Penalty.

By 59 Geo. III. c. 53, s. 26, "That if any person or persons whatsoever shall molest, disturb, hinder, oppose, or impede any officer or officers of Excise in the due execution of the powers and authorities by this act granted, or any or either of them, except in such cases for which other penalties are by this act provided, every person so offending shall forfeit and lose the sum of 200*l.*" And see 7 & 8 Geo. IV. c. 53, s. 24, to the same effect.

Obstructing officers.

Penalty, 200*l.*

(6). Cyder, Perry, Metheglin, and Mead.

(6). *Cyder, Perry, Metheglin, and Mead.*

[8 & 9 Will. III. c. 19; 3 Geo. III. c. 1; 6 Geo. IV. c. 14; 1 Will. IV. c. 51; 4 & 5 Will. IV. c. 77; 4 & 5 Will. IV. c. 85; 3 & 4 Vict. c. 61.]

For the several general regulations respecting the duties, licences, &c., as to the sale of cyder and perry by retail, *see ante, Section II.*, tit. "*Ale and Beer;*" *and Vol. I.* tit. "*Alehouses.*"

Duties on cyder and perry, and licences.

By the 1 Will. IV. c. 51, the duties and drawbacks on cyder were repealed, except the hereditary duty; which, by the above statute, was not to be collected during the life of King William. Although, however, on the accession of her present Majesty it revived, it is not collected, *see ante*, tit. "*Ale and Beer.*"

Duties and drawbacks on cyder

By 3 Geo. III. c. 1, s. 25, "Every dealer in and retailer of *cyder* and *perry*, and other person receiving into his custody either of them for sale, and any person who shall buy any fruit to make into cyder or perry for sale, shall make entry of his storehouses, cellars, and other places, at the Excise office within the district, on pain of 50*l.*"

Dealers in cyder, &c to make *entry* of their storehouses.

By 6 Geo. III. c. 14, s. 9, "That from and after the 5th day of July, 1766, every such factor or agent, or factors or agents, so having, receiving, or taking any cyder or perry into his, her, or their custody, possession, or power, to sell or dispose of, shall, at least three days before he, she, or they shall begin to sell or dispose of the same, make a true and particular entry in writing, at the office of Excise next to the place where such cyder or perry shall be intended to be sold or disposed of, of the respective name and names of such factor or agent, factors or agents, and of every storehouse, warehouse, room, cellar, or other place wherein he, she, or they have laid or kept, or intend to lay or keep, any cyder or perry; and if any such factor or agent, factors or agents, shall, contrary to the direction of this act, make use of any warehouse, storehouse, room, cellar, or other place, for the laying or keeping any cyder

6 Geo. 3, c. 14. Factors are to enter at the next office of Excise their names and storehouses, three days before they make sale of any cyder or perry consigned them,

(6). *Cyder, Perry, &c.*

6 Geo. 3, c. 14. on forfeiture of 50*l.* for every unentered storehouse made use of; and they are subjected to all the regulations, &c. which dealers in, and retailers of, cyder and perry are subject to.

or perry, without having made such entry as aforesaid, he, she, or they shall respectively forfeit and lose the sum of 50*l.* for every such storehouse, room, cellar, vault, or other place which, from and after the said 5th day of July, 1766, shall be made use of without entry as aforesaid; and all and every such factor or agent, factors or agents, so receiving cyder or perry to sell or dispose of as aforesaid, shall be subject and liable, and is and are hereby declared to be subject and liable, to all the clauses, provisoes, regulations, fines, penalties, forfeitures, rules, methods, matters, and things, any dealer or dealers in, or retailer or retailers of, cyder or perry, are subject and liable to by this or any other act or acts of Parliament now in force for the regulating and enforcing, managing, raising, levying, collecting, paying, mitigating, adjudging, ascertaining, and recovering the duties on cyder and perry."

Persons receiving cyder or perry for sale are deemed factors, and chargeable with duty; unless the same made from fruit of their own growth, or otherwise duly charged.

Sect. 5. "That all and every person and persons who shall receive into his, her, or their custody or possession any cyder or perry, to be by him, her, or them, sold, or disposed of, shall be deemed to be, and is and are hereby declared to be a factor or agent, factors or agents, within the intent of the last-mentioned clause, and chargeable as such with the said duty of 16*s.* 8*d.* per hogshead; unless he, she, or they, so receiving the same, shall and do make due proof (*a*) that such cyder or perry was made from fruit of his, her, or their own growth respectively, and not from bought fruit; or unless it shall appear by a certificate under the hand of the proper officer or officers of Excise, accompanying the said cyder or perry, that the duties imposed by this and all former act or acts of Parliament now in force had been charged on the same."

Persons buying cyder or perry, or fruit to make into cyder or perry, and selling what they so buy or make, are deemed retailers.

Sect. 11. "That all and every person or persons who shall buy any cyder or perry, or any fruit to make into cyder or perry, and shall sell any of the cyder or perry so bought or made by the hogshead, or any greater or lesser measure, or shall sell any quantity of cyder or perry, or either of them, in less quantity than twenty gallons at a time, whether the same be made from fruit of his, her, or their own growth, or from bought fruit, shall be deemed and taken to be a dealer or dealers in, and retailer or retailers of, cyder or perry, within the intent and meaning of this act, and shall be chargeable with the several duties hereby granted for such cyder or perry so made and sold respectively."

Dealers in cyder &c from fruit of their own, are subjected to like regulations, &c. as other dealers, &c.

Sect. 13. "That all and every such dealer or dealers in, and retailer or retailers of, cyder or perry made from fruit of his her, or their own growth, shall be subject and liable, and is hereby declared to be subject and liable, in respect of such cyder or perry so made, to all the clauses, provisoes, regulations, fines, penalties, forfeitures, rules, methods, matters, and things, which any dealer in, or retailer of, cyder or perry, is subject and liable to, by this or any other act or acts of Parliament now in force for the regulating, enforcing, managing, raising, levying, collecting, paying, mitigating, adjudging, ascertaining, and recovering the duties on cyder or perry."

Dealers, &c. sending, &c. cyder or perry from maker

Sect. 15. "And whereas great frauds have been committed by dealers in, and retailers of, cyder or perry, by sending and removing, or causing

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(*a*) Affidavit that cyder sent by a ship is from fruit of the maker's own growth, 6 Geo. III. c. 14, s. 5:—

County of } *A. B. of , in the said county of , maketh oath*
to wit. } *before me, one of his Majesty's justices of the peace in and for the said county of , that ten hogsheads of cyder, marked G. H, shipped by G. H. of , in the county aforesaid, yeoman, on the of instant, at (within the limits of the port of), in the said county, on board the ship , of , the master of which ship is N. O., and bound from aforesaid to , is cyder made from apples of the growth of him the said G H., and that no bought fruit was mixed therewith. The said cyder is consigned to Y. Z., esquire.*

A. B.

Sworn before me, at , in the said county of , this day of 18 .
J K.

(6). *Cyder, Perry, &c.*

6 Geo. 3, c. 14.

or procuring to be sent or removed, great quantities of cyder and perry, from the makers thereof immediately to the person or persons who contract for the same with, or order the same from, such dealers in or retailers of cyder or perry, whereby the duties thereon have not been charged, as such cyder and perry never comes into the possession of such dealers or retailers, and the like frauds may be committed by such factors and agents, if proper provision is not made for prevention thereof; that from and after the said 5th day of July, 1766, if any dealer or dealers in, or retailer or retailers of, cyder or perry, or any such factor or factors, agent or agents, shall remove or send, or cause or procure to be removed or sent, any cyder or perry, from the maker or makers thereof, to the person or persons buying or contracting for or ordering the same, without the duties thereon having been first charged, and without a certificate to accompany the same, signed by the proper officer of Excise, (which certificate he is hereby required to give, without fee or reward, to the person or persons desiring the same), signifying the quantity of cyder or perry so sent or removed, and the number of casks or other package containing the same, and that the duties thereon had been charged for the same, every such dealer or dealers in, or retailer or retailers of cyder or perry, or factor or factors, or agent or agents respectively, so offending, shall, for every such offence, forfeit and lose the sum of 50*l.*"

to contractor, &c. without the duties charged and a certificate,

forfeit 50*l.*

Sect. 16. "That the said duties by this act imposed upon cyder and perry shall and may be drawn back on the exportation of such cyder and perry, by the same means and methods, and under the same rules and directions, as the other duties, or any of them, now payable for cyder or perry, may be drawn back on the exportation thereof; and also that the said duties on cyder and perry granted by this act shall be drawn back or allowed upon the distillation of cyder and perry into low wines and spirits, by the same means and methods, and under the same rules and directions, as the other duties, or any of them, now payable for cyder or perry, may be drawn back or allowed upon the distillation thereof: and in case any cyder or perry which hath been charged with and hath paid the said duties, or any of them, granted by this act, shall hereafter, by being unfit for sale as cyder or perry, be charged with the duties on vinegar, it shall be lawful for three or more of the commissioners of Excise for the time being, or two justices of the peace within their respective jurisdictions, on proof that such cyder or perry hath been charged with and paid the said duties, or any of them, granted by this act, and that the same cyder or perry hath also been charged with the duty on vinegar, to discharge or allow such of the duties granted by this act as shall have been charged thereon, which they are hereby required to do."

These duties are to be drawn back on exportation,

and distillation;

and also where cyder or perry becomes unfit for sale as such, and shall be charged with the duties on vinegar.

Sect. 17. "That if, from and after the said 5th day of July, 1766, any person or persons whatsoever shall assault, resist, oppose, molest, or hinder any officer or officers of Excise in the due seizing or securing of any cyder or perry which, by any officer or officers of Excise, shall or may be seized by virtue or in pursuance of this act, or in the execution of any of the powers or authorities by this act given or granted, or shall by force or violence rescue, or cause to be rescued, any cyder or perry, after the same shall have been seized by such officer or officers as aforesaid, or shall attempt or endeavour so to do, or after such seizure shall stave, break, or otherwise destroy or damage any casks, vessels, or package wherein the same shall be contained, all and every the party or parties so offending shall, for every such offence respectively forfeit and lose the sum of 40*l.*"

Penalty of obstructing officers in the execution of their duty,

or rescuing or staving cyder or perry after seizure, is 40*l.*

By 8 & 9 Will. III. c. 19, s. 9, "That if any common brewer, or maker of cyder, brewing or making any beer, ale, or cyder for sale, shall at any time after the said 10th day of April deliver to any distiller or vinegar-maker any wash, tilts, ale, beer, vinegar beer, or cyder, without first giving notice to the gauger or gaugers within whose division or

Penalty on brewer or cyder-maker delivering to distiller or vinegar-maker any wash, &c. without giving notice to gauger.

(6). *Cyder, Perry, &c.*

6 Geo. 3, c. 14.

district such brewer or maker of cyder doth or shall inhabit, what quantity of wash, tilts, ale, beer, vinegar beer, or cyder he intends to deliver, and when and to whom he intends to deliver the same, every such common brewer or maker of cyder shall forfeit and lose for every barrel of wash, tilts, ale, beer, vinegar beer, and cyder, delivered without such notice given as aforesaid, the sum of 20*s.*"

Masters of vessels carrying cyder or perry coastwise to make report to proper officer of Excise within three days after arrival in port, under penalty of 20*l.*

By 6 Geo. III. c. 14, s. 8, "That from and after the said 5th day of July, 1766, the master or other person having the charge of any ship, vessel, barge, or trow, in which shall be shipped or put on board any cyder or perry, to be carried from one part of the kingdom to another, shall, within three days after his arrival at any port or place where any part of such cyder or perry is to be delivered, give to the proper officer of Excise, to be appointed for that purpose by the respective commissioners of Excise in England and Scotland respectively, a just and true account in writing of the whole quantity of cyder and perry by him received on board; distinguishing in such account the names and places of abode of the persons by whom the same, and every part thereof, was put on board, and at what place; and the names and places of abode of the persons to whom the same, and every part thereof, is or was sent directed, or consigned; and where the same, and every part thereof, was to be delivered; and in case the master or other person having the charge of any ship, vessel, barge, or trow, shall neglect or refuse to give such account as aforesaid, according to the directions of this act, or shall dispose of or deliver any part of the cyder or perry by him taken on board at sea, or in any other place, except the place to which the same was consigned (unavoidable accidents excepted), the person so offending shall, for every such offence, forfeit and lose the sum of 20*l.*; and such master or other person having the charge of such ship, vessel, barge, or trow, shall, within twenty-one days after his arrival at the place of delivery, land or cause to be landed all the cyder and perry then on board to be delivered there, on pain of forfeiting all such cyder and perry which shall not be landed according to the directions of this act; which shall and may be seized by any officer or officers of Excise, together with the casks or other packages containing the same."

Perry and cyder to be landed within 21 days after arrival, on forfeiture thereof.

Duties on mead or metheglin repealed

By the 4 & 5 Will. IV. c. 77, reciting (amongst other acts) the 6 Geo. IV. c. 37, and that the said duties and drawbacks on mead or metheglin should cease and determine, enacts, by sect. 9, "That from and after the 10th day of October, 1834, all the duties and drawbacks, and all duties upon licences required to be taken out by any maker of metheglin or mead, and all drawbacks of Excise on them, shall be repealed, cease, and determine, and be no longer paid or payable, save and except as to any arrear of the said duties which shall have become due, or any penalty or forfeiture in respect thereof which shall have been incurred before the said 10th of October, on the payment of any drawback which shall become payable in respect of any of the said commodities removed or exported before the said 10th of October."

Licences on retailers not to be affected.

Sect. 10 provides that the act shall not extend, or be deemed or construed to extend, to repeal or affect any duty on licences to be taken out by retailers of mead or metheglin, but all such licences shall continue to be taken out as before.

Who to be deemed retailers.

Sect. 11. For declaring who shall be deemed a retailer after the said 10th of October, enacts, "That every person who shall sell or send out any mead or metheglin, in any less quantity than in a whole cask containing fifteen gallons, shall be deemed and taken to be a retailer, and shall take out a licence accordingly."

(7). *Glass.*

(7). Glass.

[1 & 2 Vict. c. 44; 3 & 4 Vict. c. 22.]

From the time of passing the 6 & 7 Will. & Mary, c. 18, by which statute a duty was first imposed on glass wares, to the present day,

much attention has been bestowed, and considerable alterations have at various times been effected upon this subject by the legislature. In the year 1838, however, the numerous enactments were consolidated and amended; and the law, as at present existing, is comprised in the two following statutes.

(7). *Glass.*

It may be as well to premise that the 3 Vict. c. 17, imposes an additional duty of *5l.* per cent. upon the produce and amount of the aftermentioned duties; and, by sect. 4, an additional allowance, drawback, or bounty of *5l.* per cent. upon any allowance, drawback, or bounty on exportation.

1 & 2 Vict. c. 44. Duties and drawbacks.

The 1 & 2 Vict. c. 44, intituled "*An Act to consolidate and amend the Laws for collecting and securing the duties of Excise on Glass,*" after reciting the laws for collecting and securing the duties of Excise on glass have become numerous and complicated, and it is expedient to consolidate and amend the same, enacts, "That upon all glass made in the United Kingdom there shall be charged, raised, levied, collected, and paid unto her Majesty, her heirs and successors, the several duties, and there shall be allowed and paid the several drawbacks, specified and set forth in the schedule to this act annexed; and the said schedule shall be taken as part of this act."

Duties and drawbacks in schedule to be levied and allowed (*a*).

Duties and drawbacks to be under management of commissioners of Excise.

Sect. 2. "That the said duties and drawbacks shall be under the management of the commissioners of Excise, and shall be charged, raised, levied, sued for, collected, and applied, allowed and paid and accounted for in the same manner as other duties and drawbacks under the management of the said commissioners, and under the provisions of this act, and the general or special provisions, clauses, enactments, regulations, pains, penalties, and forfeitures contained in any act or acts relating to the collection and management of the revenue of Excise."

All glass-makers to make entry of their premises, furnaces, and arches for making or keeping glass or pots or mixed materials.

Sect. 3. "That every maker of glass shall, before beginning to make any sort or kind of glass, or to mix and prepare any materials for the making of glass, make a true and particular entry in writing of every workhouse, furnace, pot hole, pot chamber, annealing arch or oven, warehouse, room, or other place intended to be made use of by him for the making or keeping of glass, or for the making or keeping of any pot or pots for the making of glass, or for the keeping of materials mixed or prepared for the making of glass, by delivering such entry to the officer of Excise in whose survey his glasshouse shall be situated; and in every such entry such workhouse, furnace, pot hole, pot chamber, annealing arch or oven, warehouse, room, or other place shall be distinguished by a particular number or letter or number and letter or letters, and the purpose for which the same is to be used shall be specified and described; and in default thereof such maker shall for every unentered workhouse, furnace, pot hole, pot chamber, annealing arch, or oven, warehouse, room, or place forfeit two hundred pounds, together with all glass and materials and goods found therein."

Glass makers to mark and number their workhouses, furnaces, pot holes, arches, &c.

Sect. 4. "That every maker of glass shall mark and number, and at all times keep marked and numbered, every workhouse, furnace, pot hole, pot chamber, annealing arch or oven, warehouse, room, and place by him made use of for the making or keeping of glass or pots, or for keeping any materials mixed or prepared for making glass, with distinguishing letters or numbers or letters and numbers denoting the purpose for which each is respectively used, and corresponding to the description thereof in the entry; and every workhouse, furnace, pot hole, pot chamber, annealing arch or oven, warehouse, room, or place made use of for the making or keeping of glass or pots, or of any materials

(*a*) Under the repealed act of the 27 Geo. IV. c. 28, it was held that the duty imposed by that act upon plate glass squared into plates of a certain superficies was holden to attach upon rectangular figures, the word square not being confined to its strict acceptation as equilateral. (*The Attorney-General* v. *Cast Plate Glass Company*, 1 *Anstr.* 39).

(7). *Glass.*

1 & 2 Vict. c. 44.

mixed or prepared for making glass, which shall not be so marked or numbered, or which shall not correspond with the description in the entry, or the use whereof shall not be specified and described in the entry, shall be deemed and taken to be unentered."

Officers of Excise empowered to enter and survey workhouses, &c.

Sect. 5. "That it shall be lawful for any officer of Excise at all times, by day or by night, upon his request, to enter into every workhouse, pot chamber, annealing arch or oven, warehouse, room, and other place whatsoever, entered or made use of by any maker of glass, for the making or keeping of any kind of glass or pots, or of any materials mixed or prepared for the making of glass, and to inspect and examine the same, and all glass and pots and materials therein, and from time to time to examine, weigh, and take an account of all glass the duty whereon is chargeable in the whole or in part by the weight thereof, and also to examine, gauge, or otherwise take an account of the capacity or content of each and every pot for the making of all glass the duty whereon is chargeable wholly or in part on the materials used in the making thereof, and to mark and number every such pot in such manner as he shall think fit, and to examine, gauge, and take an account of all the metal and materials in every such pot; and every maker of glass into whose workhouse or premises aforesaid any officer of Excise shall, on his request, be prevented or hindered from entering, or from so taking account, shall forfeit two hundred pounds."

Pots for making plate or flint glass not to be put into annealing arch until examined, gauged and marked by officer, and re-gauged by supervisor.

Sect. 6. "That no pot for the making of plate or flint glass shall be set or put into any annealing-pot arch for the purpose of drying or hardening until such pot shall have been examined and gauged, and the dimensions thereof ascertained, and shall have been marked and numbered by the officer of Excise, nor until the supervisor or surveyor of the district shall have re-examined and re-gauged and taken the dimensions of the same, and shall have marked the initials of his name on the outside thereof; and every maker of plate or flint glass who shall put or set any pot in the annealing-pot arch before the same shall have been so examined and gauged and re-examined and re-gauged, and the dimensions thereof taken, or before the same shall be so marked and numbered, or who shall deface or obliterate any such mark or number, shall forfeit one hundred pounds; and if any such maker shall counterfeit or alter any number or mark put upon any pot by any officer or supervisor of or surveyor of Excise, he shall forfeit two hundred pounds: Provided always, that no pot shall be gauged, or the dimensions thereof taken, until the maker of plate or flint glass to whom such pot shall belong shall signify his desire to the officer of Excise to have such pot examined and gauged, by giving two hours' notice of the time when such pot will be ready for such examination and gauging."

Penalty for counterfeiting marks.

Pots not to be gauged until the maker shall require it.

Supervisor as soon as he has gauged any pot, to give copy of dimensions &c. to glass makers

Sect. 7. "That when and as soon as any pot for the making of plate or flint glass shall be gauged, and the dimensions thereof taken and ascertained by the supervisor or surveyor of Excise, according to the rules and directions to him in that behalf given from time to time by the commissioners of Excise, such dimensions shall be calculated; and the calculation of the capacity and contents of such pot, according to the gauge in that behalf taken shall, if demanded in writing of the supervisor or surveyor, be given to the maker to whom such pot shall belong, and such calculation shall express the quantity or weight of metal or material which such pot is capable of containing at every inch and half inch of its depth."

Circular divisor for ascertaining the content.

Sect. 8. "That for the purpose of so calculating and finding the quantity and weight of metal or materials which any such pot for the making of plate or flint glass shall be capable of containing, the circular divisor in making such calculation shall be for plate glass 14·3876, and for flint glass eleven.

Makers of plate and flint glass to give two hours

Sect. 9. "That every maker of plate and flint glass shall, two hours before beginning to light or kindle any fire to heat his annealing-pot

arch into which any pot or pots for the making of plate or flint glass shall have been placed or set for drying or hardening, give to the officer of Excise under whose survey he shall be a notice in writing of his intention so to do, specifying therein the particular pot or pots placed or set in such annealing arch, with the true numbers marked by the officer of Excise thereon, on pain of forfeiting fifty pounds."

1 & 2 Vict. c. 44.

notice before beginning to heat the annealing-pot arch.

Sect. 10. "That before any pot or pots for the making of flint glass shall be set in the furnace the maker of flint glass to whom such pot or pots shall belong shall give two hours' notice thereof in writing to the officer of Excise under whose survey he shall be, specifying in such notice the time and hour when such pot or pots is or are to be set in the furnace, and the particular pot or pots and marks and numbers on the same, and the particular hole in the furnace in which each pot is intended to be set; and every maker of flint glass who shall set any pot for the making of flint glass in the furnace without having given such notice as aforesaid, or who shall change or alter the position of any pot after the Excise officer attending for the purpose shall have taken an account of and examined the same, (except in any case of emergency, of which notice in writing shall be given by such maker within four hours after making the change or alteration, and before unstopping the pot, if any metal or materials shall be therein,) or who shall set in the furnace any other pot in lieu or place of any pot specified in the notice, or shall place the pot in any different hole than that specified in the notice, shall forfeit one hundred pounds."

Makers of flint glass to give two hours' notice of setting their pots in the furnace, and not to change or alter the position.

Sect. 11. "That every maker of plate and flint glass shall, two hours before beginning to fill or charge any pot with materials for the making of plate or flint glass, give notice in writing to the officer of Excise under whose survey he shall be, specifying the particular time and hour when such filling or charging is to be begun, and the particular pot or pots to be filled or charged, on pain of forfeiting one hundred pounds; and if any maker of plate or flint glass who shall have given any such notice shall not in pursuance thereof begin to fill and charge his pot or pots at the time mentioned therein, or within three hours afterwards, such notice shall be void, and a fresh notice shall be required."

Maker of plate and flint glass to give two hours' notice before beginning to fill or charge his pots with materials.

Sect. 12. "That in order to charge the duty on the metal or materials for making plate or flint glass, the quantity and weight of such metal or materials at any time contained in any pot shall be ascertained in manner following; that is to say, such pot having been gauged previously to being set in the pot-annealing arch as before directed, and the dimensions thereof taken, and the quantity of metal or materials which it is capable of containing calculated, the officer of Excise shall, for finding the quantity and weight of metal or materials therein, gauge or measure the dry inches or unoccupied space or distance between the top rim, edge, or lip of such pot in the furnace and the surface of the fluid metal or materials therein, and deduct the quantity or weight of metal or materials which this space denoted by such dry inches, or the unfilled and unoccupied part of such pot, is by such original gauging and calculation capable of containing from the quantity or weight of metal or materials which, according to such original gauge and calculation, the whole pot is denoted to be capable of containing."

Directing in what manner weight of metal in pots for making plate or flint glass is to be ascertained.

Sect. 13. "That if any metal, materials, or preparation for the making of plate or flint glass shall be put into or added to any pot after the officer of Excise shall have gauged and ascertained the quantity of metal or materials therein, the maker of plate or flint glass in whose workhouse such offence shall be committed shall forfeit one hundred pounds."

Penalty on materials being added to any pot after gauging (*a*).

Sect. 14. "That it shall be lawful for any officer of Excise to take a

Officer may take

(*a*) Under the repealed act of the 17 Geo. III. c. 39, the breaking the moules of glass bottles into a pot was held to be putting in fresh materials. (*Attorney-General* v. *Parke*, 1 *Anst.* 240).

(7). *Glass.*

1 & 2 Vict. c. 44. samples out of pots.

Where meant for making plate or flint glass is lost by the pot breaking or cracking an allowance to be made to maker.

sample or samples, not exceeding four ounces in the whole, out of each pot containing metal or materials for the making of plate or flint glass, paying for such sample or samples, if demanded, the sum of one penny for each ounce."

Sect. 15. "That in every case where the whole or any part of the metal or materials in any pot for the making of plate or flint glass shall, after having been gauged by the officer, be lost or become unfit for use by the breaking or cracking of the pot in the furnace, and notice thereof shall be given to the officer of Excise within four hours after such loss, it shall be lawful for the supervisor or surveyor of Excise and he is hereby authorized and required to make an allowance to the maker of the whole or of such part of the metal or materials as shall be proved to his satisfaction to have been lost or become unfit for use by such cracking or breaking of the pot."

Allowances of one-third and one-half the metal, and four inches at bottom of pot, on charging duty for plate glass.

Sect. 16. "That in all fixed pots containing metal or materials for the making of plate glass an allowance shall be made in charging the duty thereon of one third part of the metal or materials contained therein and four inches at the bottom of every such pot used for the making of blown plate glass, and one half of the metal or materials contained therein and four inches at the bottom of every such pot used for the making of cast plate glass, which allowances respectively shall and are hereby declared to be in full compensation for all waste, damage, breakage, or loss whatsoever, except the allowance hereinbefore granted on the breaking or cracking of pots."

Where moveable pots are used as founding pots and casting cisterns two inches at bottom only to be allowed (*a*).

Sect. 17, reciting that some makers of cast plate glass make use of moveable pots, from which the glass is cast without the metal or materials being laded out into cisterns or other vessels for casting, and in such pots the allowance of four inches at the bottom is more than is required; enacts, "That in lieu of the said allowance of four inches the officers of Excise shall allow two inches only at the bottom of each such pot as shall be used in making of cast plate glass as the founding pot, and be brought direct from the furnace to the casting table, and there emptied of the metal or materials therein contained, without such metal or materials being laded or removed out into any cistern or other vessel, which said allowance of two inches shall be as full compensation as the said allowance of four inches is declared to be for fixed pots not moveable."

How fluxed materials to be laded out (*b*).

Sect. 18 provides and enacts, "That any maker of plate glass may, within twenty hours after filling or commencing to charge any pot, but not afterwards, on giving six hours' notice in writing to the surveying officer of Excise, specifying the particular pot or pots, lade out in the presence of an officer all the fluxed metal or materials in such pot or pots into water or otherwise, so that the same cannot be used for any other purpose than cullet or waste metal to be refluxed or remelted."

Makers of plate glass to give notice specifying whether metal to be worked is for blown plate or cast plate glass.

Sect. 19 enacts, "That every maker of plate glass shall, when and as often as he shall intend to make or manufacture any plate glass, express and specify in a notice in writing to be delivered to the officer of Excise under whose survey he shall be, before any metal or materials shall be taken or worked out of any pot in which the same shall have been put for making plate glass, and before or at the time that such officer shall gauge and take an account of the metal or materials therein, whether such metal or materials in such pot are intended for cast plate glass or for blown plate glass; and if any such maker shall refuse or neglect to give such notice as aforesaid, all the metal or materials in any such pot shall be deemed and taken to be for blown plate glass, and the allowance of one third of such metal or materials only shall be given in the charge of duty; and if any such maker, after having given such notice in

(*a*) For reduction of allowances in certain cases. See 3 & 4 Vict. c. 22, s. 9, *post*, p. 786.

(*b*) And see the 3 & 4 Vict. c. 22, s. 10, *post*, p. 786.

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which shall be specified that the metal or materials in any pot are intended for cast plate glass, shall make use of such metal or materials, or any part thereof, in making blown plate glass, or shall, with or without such notice, begin to remove or work any such metal or materials from or out of any pot before the proper officer of Excise shall have gauged and charged the duty thereon, such maker shall forfeit one hundred pounds: provided that nothing herein contained shall prevent any such maker, having given a notice of any metal or materials as intended for blown plate glass, from using such metal or materials, or any part thereof, in the manufacture of cast plate glass, but in such case no greater allowance than the one-third and four inches shall be made or given."

Proviso.

Sect. 20. "That it shall be lawful for any maker of plate glass, in presence of the supervisor, surveyor, and officer of Excise, to break to pieces, to the satisfaction of such supervisor or surveyor, so that the same may be thereby rendered wholly useless, except for being remelted, any number of plates of unground and unpolished plate glass, provided the same shall be so broken to pieces after the same shall have come from the kiln, and been annealed, and before being removed from the glass-house wherein annealed into any warehouse, and so as each and every of such plates be respectively of good and merchantable plate glass metal, and produced of the original size in which the same were made; and such maker shall be allowed for every one hundred pounds of such plates so broken to pieces one hundred and ten pounds weight, and so in proportion for any less quantity, out of the gross weight of metal as ascertained by gauge (exclusive of the quantity of metal allowed for), contained in any pot or pots of metal of a subsequent making of plate glass by any such maker as aforesaid: provided also, that such maker shall give six days' notice in writing to the supervisor, surveyor, or officer of his intention to break to pieces such plates of glass, specifying in such notice the number of plates and weight of such glass, and the day and hour when the same are to be so broken to pieces, and shall, during such six days, lay, place, and keep all such plates, so that the supervisor, surveyor, or officer shall be able readily and correctly to take an account of the same, and shall permit such supervisor, surveyor, or officer to take any one of such plates before being broken, or any part of such plates after being broken, by way of sample, on paying for the same at the rate of two-pence per pound, and shall provide and use true and correct scales and weights for, and with his servants assist, such supervisor, surveyor, and officer in weighing and taking account thereof; and every such maker who shall obstruct such supervisor, surveyor, or officer therein, or who shall produce to be weighed any plate or plates of glass other than as aforesaid, or on the materials of which the duty shall not have been charged, or which shall have been manufactured from foul, bad, or unmerchantable metal or materials, or who shall produce or make use of any false scales or weights for weighing such glass, or practise or use, or cause or suffer to be practised or used, any art or device whereby the true weight of such glass shall not be ascertained, or whereby any such allowance shall be wrongfully or fraudulently obtained, shall forfeit one hundred pounds."

Makers of plate glass may break down imperfect plates, and obtain an allowance.

Regulations regarding such breaking down.

Penalty for default.

Sect. 21. "That every maker of flint glass shall, two hours before unstopping or taking down the stopper from any pot or pots containing metal or materials for the making of flint glass, give notice in writing thereof to the officer of Excise under whose survey he shall be, specifying the particular time and hour when such pot or pots is or are to be unstopped, on pain of forfeiting fifty pounds for every neglect or refusal to give such notice; and if any pot or pots of which such notice shall have been given shall not be begun to be unstopped pursuant thereto, such notice shall be null and void, and a fresh notice shall be required: Provided always, that no maker of flint glass shall incur the said penalty of fifty pounds for or by reason of his unstopping or taking down any stopper from any pot which may happen to crack or break

Makers of flint glass to give two hours notice of unstopping pots.

Penalty not to be incurred for unstopping pots which may break or crack;

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Not for unstopping pots during time of filling or charging.

whilst the same is filled with metal or materials for the sole purpose of preventing the loss of such metal or materials, or from any other pot or pots, for the sole purpose of discovering such broken pot or pots."

Sect. 22 provides and enacts, "That nothing hereinbefore contained shall subject any maker of flint glass to the said penalty of fifty pounds for or by reason of his unstopping or taking down the stopper or stoppers from any pot or pots, during the time of filling or charging such pot or pots, within forty-two hours from the time of his having begun to fill or charge such pot or pots, or for blowing any proof not exceeding four ounces during such time."

Officers may at any time unstop pots to examine the metal.

Sect. 23 enacts, "That any officer of Excise may at any time unstop or take down the stopper from any pot containing any metal or materials for the making of flint glass for the purpose of inspecting, examining, gauging, or taking an account of such metal or materials."

All pots charged with metal for making flint glass to be unstopped at same time.

Sect. 24. "That no notice having been given for opening or taking down the stopper from any pot or pots in any flint glasshouse, all such pots in such glasshouse as shall be charged with metal or materials for any particular journey or making of flint glass shall at the time specified in such notice be opened altogether and gauged, and the metal therein charged with duty at one time, upon the attendance of the officer or supervisor or surveyor of Excise for that purpose; and if within one hour after the attendance of such officer or supervisor or surveyor, all such pots shall not be opened together, so as to allow of the same being gauged, and the metal or materials therein charged with duty, such notice shall be void, and a fresh and like notice shall be given for unstopping such pots."

Flint glass makers may charge overtakers.

Sect. 25. "That it shall be lawful for any maker of flint glass, after the pots of any particular journey or making of flint glass shall have been charged under such notice as hereinbefore mentioned, and after the time specified in such notice, to fill or charge any fresh pot or pots commonly called 'overtakers,' with materials or preparations for the making of flint glass at any time during the same journey or making of glass, upon giving a like notice of his intention so to do, all which said pot or pots commonly called 'overtakers' shall be unstopped under a like notice, and together at one and the same time, in the same manner as the pots of the same journey or making are directed to be unstopped, and shall be under and subject to the same rules, regulations, and directions and penalties as any other pot or pots for the making of flint glass."

The metal in any pot, within twenty hours after beginning to charge, may, on notice, be laded out into water, to improve it.

Sect. 26. "That any maker of flint glass may, within twenty hours after filling or commencing to charge any pot, but not afterwards, on giving six hours' notice in writing to the surveying officer of Excise, specifying the particular pot or pots, lade out into water, in the presence of an officer, all the fluxed metal or materials in such pot, and thereupon make such alteration in such metal or materials as he shall think fit for improving the same or the colour thereof, and such pots shall be forthwith re-charged with the same or similar metal or materials; and every pot so recharged shall be subject to the same rules and regulations as are hereinbefore provided with respect to the unstopping of pots and giving notice for the same."

Journey to be finished and metal worked out into wares by six o'clock on Saturday night; or such as cannot be worked out to be laded out under notice, and weight deducted.

Sect. 27. "That every maker of flint glass shall and he is hereby required, at or before the hour of six o'clock in the evening of Saturday in each and every week, to work out or to cause to be worked out into goods and wares the whole of the metal or materials which at any time during that week shall have been fluxed or melted in any pot or pots to him belonging for the purpose of being made into flint glass; or in case of such maker not being able to work out the whole of such metal or materials into goods and wares by the time aforesaid, he shall give notice in writing to the officer of Excise six hours before commencing to lade out any part of the metal or materials, and shall, under such notice, lade out before the said hour of six o'clock in the evening of

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Saturday, in the presence of the supervisor or surveyor or officer who shall attend for that purpose, the whole of such metal or materials as may remain in any pot or pots after such maker shall have ceased to work during that journey; and the gauged weight of such laded metal or materials, as taken by the supervisor, surveyor, or officer in the pot, shall be deducted from the weight of glass for and in respect of which such maker shall at that time be chargeable with duty upon the gauge thereof taken in the pot according to the provisions of this act; and every maker of flint glass who shall neglect or refuse to work out all such metal or materials into wares, or to lade out the same into water, on such notice as aforesaid, before the hour of six o'clock on Saturday, or who shall lade any metal or materials without having given such notice, or without the presence of the supervisor, surveyor, or officer, shall forfeit one hundred pounds: provided always, that no deduction or allowance granted under this act shall be made to any maker of flint glass by any officer of Excise for or in respect of any metal or materials laded out at any other time than at the conclusion of the journey or week's making, except in case of pots cracking and breaking, as hereinbefore provided for."

Makers of flint glass to make entry of their lears for annealing goods.

Sect. 28. "That every maker of flint glass shall, in the entry of his workhouse and premises by this act required, in addition to all other particulars prescribed in such entry, specify every lear by him intended to be made use of for the annealing of flint glass, on pain of forfeiting two hundred pounds for every lear not so entered, together with all goods and wares which may at any time be found therein."

Construction of lears.

Sect. 29. "That every maker of flint glass shall and he is hereby required to erect, make, and construct every lear by him made use of for the annealing of glass with the sides and ends thereof perpendicular and parallel to each other, and the bottom level, with only one mouth or entrance into the same, and only one discharge hole out of the same, which discharge hole shall open into and communicate with the weighing room hereinafter mentioned, and with no other room or place whatsoever; and every such maker shall number all such lears progressively with a durable mark, and shall keep and continue the same respectively numbered in manner aforesaid; and every maker of flint glass who shall erect, make, or construct any lear contrary to the directions aforesaid, or shall neglect or refuse to number or to keep and continue the same so numbered in manner aforesaid, or shall make use of any lear not erected, made, or constructed and numbered in manner aforesaid, shall forfeit one hundred pounds for each time that any lear erected, made, or constructed contrary to the directions aforesaid, or not kept numbered as aforesaid, shall be made use of, together with all the goods and wares which may be found or put therein."

Makers of flint glass to provide fastenings for securing mouth or entrance of every lear, which shall be locked by officers.

Sect. 30. "That every maker of flint glass shall, at his own expense, provide and affix good, sufficient, and secure iron doors or gratings to the mouth or entrance of every lear intended to be made use of for the annealing of flint glass, and to the furnace and ash holes of such lear, and proper locks and keys and all other necessary fastenings for securing the same shall be provided by the supervisor or surveyor of Excise at the expense of such maker; and every such lear, and the mouth or entrance and iron doors or gratings thereof, and of the furnace and ash holes, shall be locked and fastened by the officer of Excise at all times, except when such maker shall be actually at work in putting, placing, or depositing in such lear goods and wares for the purpose of being annealed therein, or when such lear shall be opened by the proper officer of Excise, in pursuance of such previous notice as is hereinafter directed and prescribed for opening the same, for the purpose of lighting a fire in or heating the same for annealing goods and wares, or for the purpose of necessarily repairing the same; and every maker of flint glass who shall refuse or neglect to provide such iron doors or gratings, or to affix the same as hereinbefore directed, shall forfeit one hundred pounds,

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together with all goods and wares which may be found or put in any such lear during the time the same and the furnace and ash holes thereof shall remain unprovided with such iron doors or gratings so affixed."

Makers of flint glass to provide a weighing room and re-weighing room.

Sect. 31. "That every maker of flint glass shall and he is hereby required to find and provide, or erect, build, and construct, in every glass-house intended to be made use of by him for the making of flint glass, a good and secure weighing room and re-weighing room; and every such weighing room shall be near to and communicate with the lear or lears of such glass-house, and shall be well and sufficiently lighted, and, excepting the discharge hole or holes of such lear or lears which are hereinbefore required to open into such weighing room, shall not have more than one entrance or door into the same, and such one door or entrance shall open directly into and afford and form an immediate communication with the re-weighing room; and every such re-weighing room shall be a well-lighted room contiguous and next adjoining to the weighing room, and shall be separated or divided therefrom only by a wall not more than two feet in thickness, and the door of communication shall be in such wall between the said weighing and re-weighing room; and no such re-weighing room shall have more than two doors or entrances into the same, one being the said door of communication with the weighing room, and the other opening into or communicating with any part of the premises appertaining to the glass-house; and the supervisor or surveyor of Excise shall provide and affix, at the expense of every such maker, proper and secure fastenings and locks for locking and securing the doors and entrances of such weighing room and re-weighing room, and the door or entrance into every such room shall be kept locked and fastened by the officers of Excise at all times, except when the same shall be opened by the officer of Excise, under such notices as are hereinafter prescribed, for the purpose of such maker or his servants arranging or regulating the pans or trays of goods or wares which shall have been drawn or conducted through the lear or lears into such weighing room, or for the purpose of the officer of Excise weighing and taking an account of the goods and wares in such weighing room and charging the duty thereon, or for the purpose of needful and necessary repairs at times when no goods or wares shall be therein, or in any lear communicating therewith; and every such re-weighing room, and the doors and entrances thereof, shall be securely locked and fastened by the officers of Excise at all times when any weighing of goods and wares and charging of duty thereon is proceeding in the weighing room, and during the time that any glass which shall have been weighed and charged with duty by the officer shall be and remain in such re-weighing room in order to be re-weighed by the supervisor or surveyor; and every maker of flint glass who shall refuse or neglect to find and provide, or to erect, build, or construct such weighing and re-weighing rooms as aforesaid, according to the directions aforesaid, shall forfeit one hundred pounds; and it shall be lawful for the commissioners of Excise to refuse to grant a licence to any such maker for the making of flint glass until such proper secure weighing and re-weighing room shall have been provided by him."

Makers of flint glass to provide pans and trays for receiving goods in lear, and proper machinery for drawing such pans and trays through the lear into weighing room.

Sect. 32. "That every maker of flint glass shall provide a sufficient number of iron pans or trays to receive and contain, during the annealing thereof in the lear or lears, all the goods and wares of flint glass requiring to be annealed which shall from time to time be made or blown in his glass-house, and shall also find and provide and apply to such iron pans or trays (except as hereinafter provided) good and sufficient chains, rollers, instruments, and machinery, fit and proper for working the said iron pans or trays, and conveying and conducting the same, with the goods and wares therein, immediately from the mouth or mouths of such lear or lears into such lear or lears for the purpose of annealing such goods and wares therein, and shall also provide and erect

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in the most convenient part of his glass-house, or entered premises for using the same, a fit, proper, and convenient windlass for the purpose of drawing, rolling, conveying, and conducting all and every such pans and trays, with the goods and wares therein, from the mouth or mouths of the said lears through the said lear or lears, and from and out of the same, when sufficiently annealed, into the weighing room; and every maker of flint glass who shall refuse or neglect to provide a proper and sufficient number of such iron pans or trays as aforesaid, or to find and provide and apply to the same, or any of them, such good and sufficient chains, rollers, instruments, apparatus, and machinery for the working thereof as aforesaid, or to provide and erect such proper and convenient windlass as before prescribed for the purposes aforesaid, shall forfeit two hundred pounds."

Rollers and machinery need not be applied to the lear used for annealing goods for cutting.

Sect. 33 provides and enacts, "That nothing herein contained shall extend or be construed to extend to oblige any maker of flint glass to provide or apply such chains, rollers, machinery, and windlass as aforesaid to the lear in his glass-house usually known as the kiln, and commonly used for the purpose of annealing flint glass of the sort or description which is made for cutting, provided that the said lear be in other respects constructed in conformity with the directions of this act."

Two hours' notice to be given for heating the lear.

Sect. 34 enacts, "That every maker of flint glass shall, when and as often as he shall intend or be desirous to light the fire to heat any lear, give to the officer of Excise under whose survey he shall be two hours' notice in writing of his intention so to do, specifying in such notice the particular lear and the time when the fire is to be lighted, and the officer shall attend at the time mentioned in such notice, and shall unlock and open such lear, and the mouth or entrance and iron doors or gratings thereof; and if any maker shall neglect to light such fire within one hour after such lear, and the mouth or entrance and iron doors or gratings thereof, shall be opened, the notice given for that purpose shall be void, and the officer of Excise shall immediately on the expiration of such one hour again lock up and fasten such lear, and the mouth or entrance and iron doors or gratings thereof, and of the furnace and ash holes; and the maker of flint glass shall give a fresh notice in writing before such lear, or the mouth or entrance and iron doors or gratings thereof, shall again be opened."

Glass of different makings not to be annealed at same time.

Sect. 35. "That no maker of flint glass shall at one and at the same time put, place, have, or keep in the same lear any goods or wares of different makings, nor any sort or species of glass or glass wares other than flint glass wares, on pain of forfeiting one hundred pounds."

All articles requiring to be annealed as soon as made to be deposited in a pan or tray placed within mouth of the lear, and as pans or trays are filled to be drawn down into the lear, from thence into weighing room.

Sect. 36. "That every maker of flint glass, as soon as any article, vessel, or utensil of flint glass requiring to be annealed is made or blown, shall put, lay, and deposit the same in one of the iron pans or trays hereinbefore required to be provided, which shall at that time be placed within the mouth or entrance of the lear for the purpose of receiving the goods and wares requiring to be annealed, and shall in like manner continue to put, lay, and deposit in the said pan or tray so placed as aforesaid such articles, vessels, and utensils as they are made or blown, until the bottom or surface of such pan or tray shall be filled or covered; and when and as soon as the bottom or surface of each pan or tray shall be filled or covered with or by such articles, vessels, or utensils as aforesaid, the same shall, by means of such chains, rollers, instruments, windlass, and machinery before described, except where by this act such machinery is not required, be successively drawn, conveyed, and conducted into the lear, for the purpose of the goods and wares therein being annealed; and when sufficiently annealed, the pan or tray containing the same shall by the same means, except as aforesaid, be drawn, rolled, conveyed, and conducted from and out of such lear directly into the weighing room; and every such maker as aforesaid shall keep and continue all such pans or trays in the said weighing room, without

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altering or disturbing the positions of any article, vessel, or utensil, or any of the goods or wares therein, until the proper officer of Excise shall attend to weigh and take an account of all such articles, vessels, and utensils, goods and wares, and charge the duty thereon; and every maker of flint glass who shall refuse or neglect to put, lay, or deposit any article, vessel, or utensil of flint glass requiring to be annealed, as soon as the same shall be made, in one of such pans or trays so placed within the mouth or entrance of the lear, or to keep and continue any article, vessel, or utensil in the pan or tray in which placed, or who shall refuse or neglect to cause every such pan and tray, with the goods and wares thereon, to be so drawn into and through the lear into the weighing room, and to be there kept, without the positions of such goods and wares being altered or disturbed, until such articles, vessels, and utensils, goods and wares, shall be taken out of such pans or trays for the purpose of being weighed and taken an account of and charged with duty, or who shall in any other respect act contrary to the regulations aforesaid, shall forfeit two hundred pounds: Provided always, that the goods and wares placed in any lear to which such chains, rollers, and machinery are by this act required to be provided and applied shall be continued in such lear until the same shall be annealed, and shall then be taken, drawn, and removed out of such lear, with the pans or trays on which the same may be placed, into the weighing room, there to be weighed and taken account of and charged with duty with and in the same manner as other goods and wares, articles, vessels, and utensils, in the said weighing room."

Before locking up the lear at close of the journey a declaration of number of pans to be given.

Sect. 37. "That every maker of flint glass shall, when and as soon as any journey or making of flint glass shall be finished, and before the mouth or entrance or iron doors or gratings of the lear or lears, or any of them, into which any goods or wares of that journey or making shall have been put shall be locked, fastened, and secured by the officer of Excise, deliver to such officer a declaration in writing, specifying the true number of pans or trays which during that particular journey or making shall have been put or deposited in each such lear, with goods and wares therein: and if any frame or stand or other contrivance shall be placed in any pan or tray so as to enable the same to hold more goods or wares than would otherwise fill or cover the bottom or surface thereof, such pan or tray shall be described in the said declaration as a double pan or tray; and every maker of flint glass who shall neglect or refuse to deliver such declaration, or who shall deliver any false declaration, shall forfeit one hundred pounds: Provided always, that such penalty shall not be incurred for delivering a false declaration in any case where the number of pans or trays specified in any declaration so delivered shall not differ from the number of pans or trays deposited in the lear, or found in the weighing room, in any greater proportion than two per cent."

Notice for opening weighing room for regulating pans

Sect. 38. "That when any maker of flint glass shall be desirous of having the door or entrance of any weighing room opened for the purpose of arranging or regulating the positions of the pans or trays therein, he shall give to the officer of Excise under whose survey he shall be one hour's previous notice thereof in writing, specifying in such notice the particular weighing room to be opened, and the particular time when and the purpose for which he is desirous to have them unlocked and opened; whereupon the officer shall attend pursuant to such notice, and, having previously locked the door of the re-weighing room, shall unlock and open the door or entrance of the weighing room, and continue the same so unlocked and open for the space of half an hour, during which time such maker, or his servants, shall be at liberty to arrange or regulate the positions of the pans or trays in such weighing room; and when such arrangements or regulations shall be finished, or at the end of the said half-hour, whichever shall first happen, the officer shall again lock, fasten, and secure the said door or entrance: Provided

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always, that no such maker shall be at liberty to give any such notice more than once in any six hours, nor shall any officer of Excise, in pursuance or under pretence of any such notice, unlock or open the door or entrance of any weighing room oftener than once in any space of six hours, save and except in the case of any of the chains or rollers or machinery of the lear breaking or becoming out of order so as to prevent the working thereof, in which case it shall be lawful for the officer of Excise, on notice thereof, to unlock or open the said door or entrance, and admit the maker of flint glass, or his workmen, for repairing or arranging in the presence of the officer such machinery."

Notice for opening weighing room to weigh and charge goods.

Sect. 39. "That when any maker of flint glass shall be desirous of having any weighing room to him belonging unlocked and opened for the purpose of having weighed and charged with duty any flint glass therein, he shall give to the officer of Excise under whose survey he shall be six hours' previous notice thereof in writing, specifying in such notice the particular weighing room and the particular time and hour at and the purpose for which he is desirous to have the same unlocked and opened; and the officer of Excise shall attend at the time mentioned in such notice, and shall unlock and open such weighing room for the purpose aforesaid, and such officer of Excise shall proceed to weigh and shall weigh and take an account of the whole of the goods and wares in such weighing room, (except such as may be selected by the maker thereof to be broken down according to the provision hereinafter made), and shall charge such maker with the duty for and in respect of all such goods and wares according to such weight: Provided always, that no maker of flint glass shall be at liberty to give any notice for having any weighing room, or the door or entrance thereof, opened for the purpose aforesaid at any other time than between the hours of six of the clock in the morning and six of the clock in the evening; and any such notice which shall specify any time for the unlocking or opening any weighing room for the purpose other than between the said hours shall be null and void."

Manner of proceeding with respect to weighing goods.

Sect. 40. "That when any officer of Excise shall attend to weigh any flint glass or flint glass goods or wares he shall, before opening the door of the weighing room, securely lock and fasten the outer door of the re-weighing room, and shall continue the same so locked and fastened during the whole time that such officer shall be engaged in weighing in the weighing room, and until all the glass shall have been weighed and removed into the re-weighing room; and as soon as the officer shall have finished weighing all the glass and goods and wares weighed by him the maker thereof shall, with a sufficient number of his workmen or servants, without delay remove and convey all such glass and goods and wares, and the glass selected as unfit to be weighed and broken down, according to the provision hereinafter made, from and out of the weighing room into the re-weighing room, and shall there place and deposit the same; and all such flint glass, goods, and wares and broken glass shall remain in such re-weighing room, with the doors or entrances thereof securely locked and fastened by the officer of Excise, for the space of four hours, unless sooner re-weighed by the supervisor or surveyor or other superior officer of Excise, who are hereby authorized to weigh and re-weigh all such flint glass, goods, and wares accordingly; and if upon the re-weighing thereof any additional weight shall be discovered or found, such additional weight shall be chargeable and charged with duty; and the supervisor or surveyor or other superior officer attending to re-weigh shall examine all such glass which may have been selected and broken down, and satisfy himself that the same is properly and sufficiently broken, so as to be incapable of being used as wares or utensils, or otherwise than for cullet or waste glass; and as soon as such re-weighing shall be finished, or at the expiration of the said four hours, if the supervisor, surveyor, or other superior officer shall not have attended to re-weigh, all the flint glass, goods, wares, and broken glass in

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the said re-weighing room shall be forthwith removed and conveyed from and out of the same, under pain of forfeiture thereof; and every such flint glass maker who shall not convey and remove all the glass, goods, and wares weighed, and the broken glass, from and out of the weighing into the re-weighing room, and there place and deposit and continue the same, or who shall before the same are re-weighed, or the expiration of the four hours, remove or convey the same out of the re-weighing room, shall forfeit two hundred pounds."

Room to be provided for deposit of flint glass not requiring to be annealed.

Sect. 41. "That every maker of flint glass who shall manufacture any flint glass which does not require to be annealed in the lear shall find and provide, or build or construct in every glass-house in which such flint glass is to be made or manufactured a good, sufficient, and secure and well-lighted room for the placing and depositing therein of all goods and wares which shall not require to be annealed, which room shall be next to and communicate with such glass-house; and no such room shall have more than one door or entrance into the same, which door or entrance shall open directly into and afford and form an immediate communication with the glass-house; and the supervisor or surveyor of Excise shall, at the expense of the maker of flint glass, find proper and sufficient locks and fastenings for securing the said room; and such room, and the door or entrance thereof, shall be kept securely locked and fastened by the officer of Excise at all times when there shall be any glass therein deposited, except when the same shall be opened by the officer of Excise for the purpose of putting or depositing goods or wares therein, or of weighing and taking an account of and charging duty on the same; and when any such maker of flint glass shall be desirous of having the door or entrance of such room unlocked or opened for any of the purposes aforesaid, he shall give to the officer of Excise under whose survey he shall be, one hour's previous notice in writing of his being desirous of depositing glass in such room, and six hours' notice for weighing such glass for the charge of duty, specifying in such notices respectively the time and hour when he is desirous to have the said room unlocked and opened, whereupon the officer shall attend pursuant to such notice, and shall unlock and open the door or entrance of such room, and shall continue the same so unlocked and open for so long a time as may be necessary for the purposes specified in such notice, and such officer shall afterwards again securely lock and fasten the said door or entrance; and every such maker of flint glass who shall not find and provide or build and construct such room as aforesaid, shall forfeit two hundred pounds, and be further subject to the penalty for not placing and depositing every article, vessel, and utensil manufactured by him in a pan or tray in the mouth or entrance of the lear."

Notice to be given for making goods not requiring to be annealed.

Sect. 42. "That every maker of flint glass intending to manufacture goods or wares not requiring to be annealed in the lear shall, one hour before beginning to make any such goods or wares, give notice in writing to the officer of Excise under whose survey he shall be, of his intention so to do, specifying in such notice the particular kind of goods or wares to be made; and if any maker of flint glass shall neglect or omit to give such notice, none of the goods or wares made by him shall be allowed to be placed or deposited in the said room for unannealed goods and wares, but if placed or deposited therein shall be forfeited; and all goods and wares made or manufactured without such notice shall be placed and deposited in the lear, and be conveyed through the same into the weighing room, according to the regulations hereinbefore prescribed, on pain of forfeiting the penalty imposed for any breach of such regulations."

All goods not requiring to be annealed to be placed in baskets or trays, and

Sect. 43. "That every maker of flint glass, having provided such room as before required for depositing therein unannealed glass, who shall make or manufacture under such notice as aforesaid any goods or wares of flint glass not requiring to be annealed, shall place or deposit all such

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goods and wares as the same are and as each article thereof is made in trays or baskets to be by him provided, and shall immediately, as the same are respectively filled, carry and convey such trays or baskets, with the goods and wares placed and deposited therein, into the said room provided for the purpose, and place and deposit them therein, and shall keep and continue the same with the goods and wares in them in such room until the officer of Excise shall have finally weighed and taken an account of such goods and wares, and charged the same with duty; and every maker of flint glass who shall make or manufacture any such flint glass, and shall not place and deposit any such goods or wares as soon as made in such trays or baskets, or shall not immediately as the same shall be filled carry and convey every such tray or basket, with the goods and wares therein, into such room, and there deposit the same, or shall not keep and continue the same in such room until all such goods and wares shall be weighed and taken an account of by the officer of Excise, shall forfeit two hundred pounds: provided always, that any officer of Excise shall be at liberty to weigh or take an account of all goods and wares brought or deposited in such room at such time and in such manner as he may think fit."

carried immediately into room for unannealed goods, to remain there until weighed and charged with duty.

Sect. 44. "That all goods and wares deposited in such room for unannealed goods shall be weighed and taken account of and charged with duty by the officers of Excise, either on such notice as aforesaid being given for that purpose, or at such time as any officer shall see fit; and all such goods and wares, after being weighed and taken an account of and charged with duty, shall, together with any glass which may have been broken, under the provisions hereinafter made, remain in such room, with the door or entrance thereof securely locked and fastened by the officer of Excise, for the space of four hours, unless sooner re-weighed by the supervisor or surveyor or other superior officer, who are hereby authorized to weigh and re-weigh the same, and in case of any additional weight being found to charge the duty thereon as hereinbefore provided in respect of glass re-weighed in the re-weighing room; and as soon as the same shall be re-weighed by the supervisor or surveyor or other superior officer, or at the end of the said four hours, the door of such room shall again be opened, and all such goods and wares so weighed and taken account of and charged with duty, and all the broken glass, shall be forthwith removed and conveyed out of such room, under pain of forfeiture thereof; and every maker of flint glass who shall remove any such glass before the same has been re-weighed, or the expiration of the said four hours, shall forfeit one hundred pounds."

Unannealed goods, after being weighed by the officer, to remain in room four hours, unless sooner re-weighed by supervisor.

Penalty.

Sect. 45 provides and enacts, "That when any manufactured flint glass goods or wares shall be produced to be weighed by any officer of Excise, either in the weighing room or in the room for unannealed goods, it shall be lawful for the maker of such goods or wares to select and declare any part thereof as imperfect or broken, or not properly manufactured, and desire the same not to be weighed; and thereupon all such goods and wares which shall be so selected and declared shall be forthwith broken to pieces in the presence of or by the officer of Excise who shall be in attendance, and rendered unfit for use as manufactured goods or wares, or otherwise than as cullet or waste glass, and after being so broken and rendered unfit for use shall be put aside without being weighed; and such officer shall thereupon proceed to weigh and take an account of all the remainder of the goods and wares which shall be produced to him; and if any maker of flint glass shall hinder or prevent or obstruct any officer of Excise in breaking or causing to be broken to pieces any glass so selected and declared to be imperfect, broken, or not properly manufactured, he shall forfeit one hundred pounds."

Maker may select any flint glass goods or wares, and declare them imperfect, and not to be weighed, and such articles shall be broken to pieces, and not charged.

Sect. 46 enacts, "That every maker of spread or broad glass, crown glass, German sheet glass, and of common glass bottles respectively shall

Construction of annealing arches or ovens.

(7). *Glass.*

1 & 2 Vict. c. 44.

and he is hereby required to erect, build, make, and construct every annealing arch or oven to be made use of for annealing the glass manufactured by him with the sides and ends thereof perpendicular and parallel to each other respectively, and the bottom thereof level, and (except as hereinafter provided) with only one mouth or entrance into the same, and shall number the same progressively with a durable mark; and any such maker as aforesaid who shall erect, build, make, or construct any annealing arch or oven, or make use of any annealing arch or oven made or constructed contrary to the directions aforesaid, or who shall refuse or neglect to number or to keep numbered the same progressively as aforesaid, shall forfeit one hundred pounds, together with all the glass goods and wares which may be put or found therein."

Penalty.

Annealing arch or oven for German sheet glass may have two mouths or entrances.

Sect. 47 provides and enacts, "That it shall be lawful for the commissioners of Excise to permit and allow any annealing arch or oven intended to be used for annealing German sheet glass to be made and constructed with two mouths or entrances to the same, so that such annealing arch or oven be built, made, and constructed in other respects in conformity with the regulations hereinbefore prescribed, and that each such mouth or entrance be secured in manner hereinafter required."

Iron grating and fastenings to be provided for annealing arches or ovens, and to be locked up at all times when goods are therein.

Sect. 48 enacts, "That every maker of spread or broad glass, crown glass, German sheet glass, and common bottles shall, at his own expence, provide and affix a good and sufficient iron grating to each mouth or entrance of every annealing arch or oven made use of by him for the annealing of spread or broad glass, crown glass, German glass, glass or common bottles, or utensils of common bottle metal respectively, such iron grating to extend down to the ground, or within one foot of the ground; and proper locks and keys and all other necessary fastenings for locking and securing every such annealing arch and oven, and the mouth or entrance and iron grating thereof, shall be provided by the respective supervisors and surveyors of Excise, at the expence of such makers respectively; and at the expiration of four hours after any such makers shall have delivered, or ought to have delivered to the officer of Excise, the declaration of the number of tables or sheets of spread or broad glass, crown glass, or German sheet glass, or of bottles and vessels or utensils, put or deposited or contained in any such annealing arch or oven respectively as is hereinafter directed and required, or sooner, if desired by such maker, the officer of Excise shall securely lock and fasten every such annealing arch or oven, and the mouth or entrance or mouths and entrances and iron grating thereof, and shall keep the same so locked and fastened until the glass contained in such annealing arch or oven shall be taken out, in the presence of the proper officer of Excise, for the purpose of being weighed and charged with duty; and every such maker of glass who shall refuse or neglect, at his own expence, to provide such iron grating as aforesaid, or to affix the same as hereinbefore directed before such annealing arch or oven shall be made use of, shall forfeit one hundred pounds, together with all glass goods and wares, bottles and utensils respectively which may be put or found in any such annealing arch to which such iron grating shall not be affixed."

Makers of spread or crown or German sheet glass, or of common bottles, to give two hours' notice for heating the annealing arch.

Sect. 49. "That every maker of spread or broad glass, crown glass, German sheet glass, or of common bottles shall, two hours before beginning to light or kindle any fire to heat any annealing arch or oven used by him for annealing glass, give notice in writing of his intention so to do to the proper officer of Excise; and if any such maker shall not light and kindle such fire within one hour after the time specified in any notice, such notice shall be null and void, and a fresh one shall be required; and every such maker respectively who shall light or kindle a fire in any annealing arch or oven without having given such previous notice shall forfeit fifty pounds: provided always, that if any such

1 & 2 Vict. c. 44.

maker shall be desirous at any time when no glass shall be therein of making use of any such arch or oven for the purpose of annealing therein any pots or pot rings, such maker shall specify in the said notice for kindling or lighting the fire the particular purpose for which the said arch or oven is to be heated."

All crown glass as soon as flashed, and spread and German sheet glass as soon as opened, to be placed in the annealing arch, and no other glass to be put therein.

Sect. 50. "That every maker of spread or broad glass, crown glass, and German sheet glass shall, when and so soon as any crown glass shall be made or flashed, or any spread or broad glass or German sheet glass opened out, remove all such crown glass as the same is made and flashed, and all such spread or broad glass or German sheet glass as the same is opened, directly into the annealing arch or oven, and there place and deposit the same in such manner and form as the officer of Excise shall approve, and so that the same may, so far as the nature of the case will admit, be the most easily and securely viewed, inspected, and examined, and the number and kinds thereof judged of in each such annealing arch or oven; and no such maker shall put, place, have, or keep any other sort or species of glass or glass wares whatsoever in any annealing arch or oven entered or made use of for the annealing of spread or broad glass, crown glass, or German sheet glass than such glass respectively; and every such maker of glass as aforesaid who shall neglect or refuse to remove any crown glass, spread or broad glass, or German sheet glass, when and so soon as the same is made or flashed or opened, directly into the annealing arch or oven, or to place or deposit the same as aforesaid, or who shall put, place, have, or keep any other sort or species of glass or glass wares in any annealing arch or oven entered or made use of for annealing spread or broad glass, crown glass, or German sheet glass than such glass respectively, shall forfeit one hundred pounds."

Makers of spread, crown, and German sheet glass, before closing up the annealing arch, to deliver a declaration of number of tables placed in it (*a*).

Sect. 51. "That within half an hour after all the tables or sheets of spread or broad glass, crown glass, or German sheet glass to be annealed are deposited and placed in the annealing arch or oven containing the same, and before the maker thereof shall begin to close or stop up such annealing arch or oven, such maker shall deliver to the officer of Excise under whose survey he shall be a declaration in writing, specifying the true number of tables or sheets of spread or broad glass or crown glass or German sheet glass respectively put and deposited and contained in each and every such annealing arch or oven respectively, and also the true number of inches in length occupied by such tables or sheets of spread or broad glass or crown or German sheet glass (as the case may be) from the back or bottom of each such arch or oven to the first or front table or sheet of glass, and the number of inches unoccupied between such first or front table or sheet of glass and the grating at the mouth of the arch or oven; and if the number of tables or sheets of glass specified in such declaration shall be greater or less than at and after the rate of five per centum on the number of tables or sheets of glass put or deposited or found in any such annealing arch, or if the number of inches specified in any such declaration as occupied by the tables or sheets of glass, or unoccupied in any such annealing arch or oven, shall be found to vary in a greater or less proportion than five per centum from the number of inches ascertained on any measurement of any such annealing arch or oven by any officer of Excise, such maker in either such case shall forfeit fifty pounds; and if any such maker shall neglect or refuse to deliver such declaration as aforesaid, or if any such variation in the number of the tables or sheets of glass as aforesaid, and also at the same time any such variation in the number of inches, shall be found or discovered, such maker shall forfeit two hundred

(*a*) By 3 & 4 Vict. c. 22, s. 3, they are to give in their declaration the spaces occupied and unoccupied by each pile of tables or sheets in the annealing arch. See *post*, p. 785.

(7). *Glass.*

1 & 2 Vict. c. 44.

All bottles and utensils of bottle metal to be placed in the annealing arch as soon as made, and no other goods to be put therein.

pounds, with all the glass put or deposited or contained in such annealing arch or oven."

Sect. 52. "That every maker of common bottles shall, when and so soon as the same shall be blown or made, remove all and singular the common bottles and other vessels and utensils of common bottle metal by him blown or made directly into the annealing arch or oven, and shall there place and deposit the same in such manner and form as the officer of Excise under whose survey he shall be shall approve, so that the same may be most easily and securely viewed, inspected, and examined, and the numbers and kinds thereof ascertained in every such annealing arch or oven; and no such maker shall at one and the same time put, place, have, or keep in any such annealing arch or oven any common bottles or other vessels or utensils of common bottle metal of different makings or fillings of the pots, nor shall put, place, or keep any sort or kind of glass or glass wares other than common bottles or vessels or utensils made of common bottle metal in any annealing arch or oven entered or made use of for annealing common bottles; and every such maker who shall neglect or refuse to remove all the common bottles or vessels and utensils blown or made by him into the annealing arch or oven directly as made, or to place or deposit the same in manner and form aforesaid, or who shall at one and the same time put, place, have, or keep in any annealing arch or oven any common bottles or other vessels or utensils made of common bottle metal of different making or fillings of the pots, or shall put, place, or keep any sort or kind of glass or glass wares other than common bottles or vessels or utensils made of common bottle metal in any annealing arch or oven entered or made use of for annealing common bottles, shall forfeit one hundred pounds."

Makers of bottles before beginning to close up the annealing arch to deliver a declaration of number of bottles placed therein.

Sect. 53. "That before any maker of common bottles shall begin to close or stop up any annealing arch or oven containing common bottles or vessels or utensils he shall deliver to the officer of Excise under whose survey he shall be a declaration in writing, specifying the true number of bottles and other vessels or utensils of common bottle metal put or deposited or contained in each and every annealing arch respectively; and every such maker who shall neglect or refuse to deliver such declaration as aforesaid, or shall deliver any untrue declaration, shall forfeit one hundred pounds: Provided always, that such penalty shall not be incurred for delivering an untrue declaration in any case where the number of bottles, vessels, and utensils specified in any declaration so delivered shall not differ from the number of bottles, vessels, and utensils put, deposited, or found in any such annealing arch in any greater proportion than five per centum."

Regulations respecting drawing of annealing arches.

Sect. 54. "That every maker of spread glass, crown glass, German sheet glass, or of common bottles respectively, being desirous to draw or take any such glass or bottles or vessels or utensils respectively out of any annealing arch or arches or oven or ovens, shall, twelve hours before beginning to draw, give notice thereof in writing to the officer of Excise under whose survey he shall be, specifying in such notice each particular arch or oven intended to be drawn, and the number thereof, and the particular time and hour when it is intended to begin to draw the same; and upon such notice having been given the officer of Excise shall attend at the time specified therein, and shall unlock and open such annealing arch or arches, oven or ovens, and such officer shall also attend and see the whole and all and every part of such glass or bottles or vessels or utensils respectively drawn and taken from and out of such annealing arch or arches, oven or ovens, and shall also weigh and take an account of the whole and every part thereof, except any bottles or vessels or utensils which may be broken and unfit for use, and charge the maker with the duty thereon according to such weight; and every such maker of glass or of bottles as aforesaid who shall have given such notice and begun to draw any annealing arch or oven, and who shall not,

1 & 2 Vict. c. 44.

with a sufficient number of workmen and servants, proceed and continue without any unnecessary delay or interruption to draw and take the whole and all and every part of the spread or broad glass, crown glass, or German sheet glass, or bottles or vessels and utensils, as the case may be, from and out of such annealing arch or oven, and proceed and continue to bring the same as drawn or taken out to the scale to be weighed by or in the presence of the officer of Excise, or who shall not finish such drawing and weighing (except in the case of inevitable accident) within four hours from the commencement of the drawing, shall forfeit two hundred pounds; and if any such maker as aforesaid shall neglect or refuse to begin to draw any annealing arch or oven immediately after the same, and the mouth or entrance and iron grating thereof, shall be opened by the officer of Excise, the notice for drawing the same shall be void, and such officer shall immediately again securely lock and fasten each and every such annealing arch or oven, and the mouth or entrance and iron grating thereof, and a like fresh notice shall be required before the same shall again be opened: Provided always, that no such maker as aforesaid shall be at liberty to give any such notice for drawing any annealing arch or oven at any other time than between six of the clock in the morning and six of the clock in the evening, and every notice given for drawing any annealing arch or oven at any other time shall be null and void."

Spread, crown, and German sheet glass, after being weighed by officer, to be deposited three hours separate from other glass, unless sooner re weighed by supervisor.

Sect. 55. "That as soon as any spread or broad glass, crown glass, or German sheet glass shall have been weighed by the officer of Excise the same shall be forthwith placed or deposited in a convenient room or place separate and apart from all other glass or glass wares whatsoever, and such spread or broad glass, crown glass, or German sheet glass shall remain in such room or place where so placed or deposited for the full space of three hours from the time of finishing the weighing thereof, unless the same shall have been sooner weighed or re-weighed by the surveyor or supervisor of Excise or other superior officer, who is hereby empowered to weigh or re-weigh all such glass; and if upon the re-weighing thereof any additional weight shall be discovered or found, such additional weight shall be chargeable and charged with the respective duties by law payable for such glass respectively; and every maker of spread or broad glass, crown glass, and German sheet glass respectively who shall refuse or neglect to place and deposit any such glass in such convenient room or place as aforesaid separate and apart from all other glass or glass wares, or who shall remove or convey out of such room or place any such glass before the end of three hours after the same shall have been weighed by the officer, unless the same shall be sooner weighed or re-weighed by the surveyor or supervisor or other superior officer of Excise, shall forfeit one hundred pounds."

Makers of German sheet glass, making shades which do not require to be annealed, to provide a separate room for deposit of them.

Sect. 56. "That every maker of German sheet glass making shades which do not require to be annealed shall and is hereby required to provide in his glass-house a good, sufficient, and well-lighted room for the placing and depositing therein such shades as do not require to be annealed in an annealing arch or oven, and shall also provide a sufficient number of trays and baskets for the receiving of all such shades, and carrying and conveying and depositing the same in such room as soon as made; and the said room shall be constructed in the same manner, and shall be locked and fastened and opened, and all shades made of German sheet glass not requiring to be annealed shall be removed to such room, and there deposited, weighed, and charged with duty, and kept therein under the same rules, regulations, notices, fines, penalties, and forfeitures as are in and by this act prescribed and imposed in respect of the room required to be provided by makers of flint glass for the deposit of flint glass goods and wares not required to be annealed, and in respect of the removal and deposit and weighing and re-weighing and charging and keeping of such flint glass goods and wares in such last-mentioned room."

(7). *Glass.*

1 & 2 Vict. c. 44.

Makers of German sheet glass to declare number of shades made each journey (a).

Sect. 57. "That every maker of German sheet glass shall, as soon as the journey or making of glass is finished, and before the door of such room for unannealed shades is locked and secured by the officer of Excise, deliver to such officer a declaration in writing of the number of shades made in such journey or making; and every maker of German sheet glass who shall neglect or refuse to deliver such declaration, or who shall deliver any untrue declaration, shall forfeit one hundred pounds."

Commissioners of Excise may grant permission for spread glass or crown or German sheet glass to be annealed in a lear.

Sect. 58 provides and enacts, "That it shall be lawful for the commissioners of Excise and they are hereby authorized to grant permission to any maker of spread or broad glass, crown glass, or German sheet glass to anneal such glass in a lear to be provided for that purpose; and in case of any such permission, the maker of glass to whom the same shall be granted shall make and construct a lear in the same form as is prescribed in respect to lears for annealing flint glass, with all the same fastenings and securities thereto, and a like weighing room and re-weighing room, and pans and trays and machinery for conveying such pans and trays through the lear into the weighing room; and all the spread or broad glass, crown or German sheet glass made by any such maker shall, as soon as such crown glass shall be made or flashed, or such spread or broad glass or German sheet glass shall be opened out, be placed in the pans or trays within the mouth of the lear, and be drawn down the lear into the weighing room, and shall, with the maker thereof, become subject and liable to all the rules, regulations, enactments, and provisions hereinbefore contained in respect of the lear and weighing and re-weighing room, and the opening and closing the same, and the annealing and weighing and re-weighing of flint glass and goods and wares of flint glass (save and except as to selecting and putting aside of imperfect glass to be broken to pieces without weighing); and such maker shall be subject and liable to all the pains, penalties, and forfeitures imposed in respect to flint glass and goods and wares of flint glass, and in respect to the regulations, rules, provisions, and enactments relating to the same."

Plate glass not to be manufactured at same time in same house with spread, crown, or German sheet glass.

Sect. 59 enacts, "That no maker of spread or broad glass, crown glass, or German sheet glass who shall also be a maker of plate glass shall make or manufacture at the same time, from the same furnace, or within the same glass-house or building, any spread or broad glass, crown glass, or German sheet glass and plate glass; but all such plate glass shall be made and manufactured in a separate period when no spread or broad glass, crown glass, or German sheet glass shall be making or manufacturing, or any fluxed metal or materials for making the same shall be in such glass-house or building; and every such maker who shall make or manufacture at the same time, from the same furnace or within the same glass-house or building, any plate glass, and any spread or broad glass, crown glass, or German sheet glass, shall forfeit 100*l.*, together with all the plate glass and spread or broad glass, crown glass, or German sheet glass found so manufacturing or manufactured together at the same time."

Sect. 60 is repealed by the 3 & 4 Vict. c. 22, s. 5, and in lieu thereof, it is enacted by

3 & 4 Vict. c. 22. Limiting thickness of broad, crown, and German sheet glass.

Sect. 6, "That all spread or broad glass, or crown or German sheet glass, which shall be made of greater thickness than one-ninth of an inch in the foot superficial, exclusive of the selvage or rim thereof, and of the centre or bullion of crown glass, shall be forfeited."

And by sect. 7 of the same act, the 61st section of the 1 & 2 Vict. c. 44, is repealed.

1 & 2 Vict. c. 44. Fastenings, locks,

Sect. 62. "That every maker of glass in whose glass-house any doors, gratings, or fastenings, locks or keys shall be provided for the securing

(a) By the 3 & 4 Vict. c. 22, s. 4, cylinders and other goods not being shades shall not be deposited in the room for unannealed shades or included in the declaration. See *post*, p. 785.

1 & 2 Vict. c. 44.

and keys to be altered and repaired when required, at expense of makers of glass.

any lear, annealing arch or oven, weighing or re-weighing room, or other room or place required to be secured under the provisions of this act, shall from time to time, and at all times when required so to do by the surveyor or supervisor or any superior officer of Excise, immediately alter, repair, and amend the same respectively; and the surveyor or supervisor of the district may at all times as it may be necessary change and remove any locks or keys or fastenings, and replace the same, with other locks and keys and fastenings; and every maker of glass who shall refuse or neglect to pay for any lock or key or fastenings at any time provided by the surveyor or supervisor of Excise for locking or securing any door, grating, fastening, room, or place required by the provisions of this act to be locked, fastened, and secured, either when first supplied or on any change of such lock or key or fastening, or who shall, for the space of ten days after being required so to do by any notice in writing from the surveyor or supervisor or other superior officer of Excise, neglect or refuse to alter, amend, or repair any door, grating, or fastening as aforesaid, shall forfeit 100*l.*"

Penalty on gaining access to places secured, or damaging fastenings.

Sect. 63. "That if any maker of glass shall, by any false or duplicate key, or by any means, art, or contrivance whatsoever, open any lock or fastening, or open or gain any access to any lear, annealing arch or oven, or the mouth, entrance, or iron grating thereof, or any weighing or re-weighing room, or any other room or place, after the same shall have been locked, fastened, or secured by the officer of Excise, before the same shall be again unlocked and opened by the officer under such notice and at the times prescribed by this act, or shall wilfully break or damage any fastening, lock, key, or seal, or any label for securing any lock or fastening provided or affixed by any supervisor or officer of Excise, or shall provide, affix, or make use of, or procure to be provided, affixed, or made use of, any false or deceptive fastening, or use any art, means or device whereby the securities intended by this act shall be in any manner defeated, such maker of glass shall forfeit 500*l.*"

Every maker of glass (except plate glass) to provide weights and scales.

Sect. 64. "That every maker of glass (except makers of plate glass) shall and he is hereby required to provide and keep in his glass-house sufficient and just scales and weights, and every maker of flint glass in his weighing and re-weighing room and room for unannealed glass, and every maker of spread or broad glass, crown glass, and German sheet glass, and of bottles, in a proper place, to be approved of by the supervisor or surveyor of Excise, within view of the annealing arches or ovens, or as near thereto as the same can conveniently be placed, and every maker of German sheet glass in his room for unannealed glass, shall respectively provide and firmly fix a fit and proper hook or hooks for holding and suspending the scales; and every such maker of glass respectively shall permit and suffer any officer of Excise to use the said hook or hooks, scales and weights, for the purpose of weighing and taking an account of all the glass which shall be at any time in the possession of any such maker respectively; and every such maker of glass who shall neglect to keep such scales and weights, or to provide and affix in manner aforesaid such fit and proper hooks, in the respective rooms and places aforesaid, or shall not permit or suffer any officer of Excise to use the same, shall forfeit 100*l.*; and every such maker of glass who shall in the weighing of any glass make use of or procure, or cause or suffer to be made use of, any false or unjust or insufficient scales or weights, or who shall make use of any force or violence, or practise any art, device, or contrivance, by which any officer of Excise may be hindered or prevented or deceived in taking the true account or weight of any glass, or charging the true amount of duty thereon, shall forfeit 500*l.*, together with all the glass weighed or produced to be weighed at the time of such offence, and all such unjust or insufficient scales or weights."

Penalty for neglect, 100*l.*; for using false scales or weights, &c. 500*l.*

Makers, with their servants, to assist officers in weighing.

Sect. 65. "That every maker of glass (except plate glass) shall, when and as often as he shall be thereto required by any officer of Ex-

(7). *Glass.*

& 2 Vict. c. 44.

cise, with a sufficient number of his workmen or servants, aid and assist to the utmost of his power the officers of Excise in weighing or re-weighing and taking an account of all glass in the possession of such maker required to be weighed or re-weighed under the provisions of this act, on pain of forfeiting for every refusal or neglect one hundred pounds."

In weighing glass the turn of scale to be given in favour of crown, &c.

Sect. 66. "That in the weighing of all glass under the provisions of this act the turn of the scale shall be given in favour of the Crown, and in lieu thereof there shall be allowed in the charge of duty to the maker one pound weight upon each and every one hundred pounds of such glass respectively weighed."

Glass not charged with duty to be kept separate from that which has been.

Sect. 67. "That every maker of glass shall at all times keep all glass in his custody and possession which shall not have been weighed by the officer of Excise, and charged with duty, separate and apart from all glass, glass wares, bottles, and utensils which shall have been so weighed and charged, on pain of forfeiting one hundred pounds."

Officers of Excise, at end of every six weeks, to make return of duty charged on each glass maker, who shall pay amount in six weeks afterwards

Sect. 68. "That every officer of Excise under whose survey any maker of glass shall be, or any other officer who shall be appointed so to do, shall from time to time at the expiration of every six weeks, or at such other times as the commissioners of Excise shall direct, make out and deliver to the commissioners of Excise an account or return in writing of the quantity of glass made by such maker, and for which he shall have become chargeable with duty in such preceding six weeks or period, and of the duty payable thereon, according to the weight of such glass, or of the materials from which the same may have been manufactured, and shall also leave a copy of such account or return with such maker of glass; and the account or return of such officer shall be a charge on every such maker of glass, who shall pay and clear off the duty appearing by such return to have become due within six weeks after such account or return shall have been made out, or in default thereof shall forfeit double the amount of such duty."

For making charge on flint glass, an account to be made out at end of each six weeks of whole quantity of glass charged with duty, and of whole weight of glass weighed within such period, and two-pence per pound additional to be charged on all excess above forty per centum.

Sect. 69. "That for making out the said account or return in respect to flint glass an account shall, at the end of every round or period of six weeks, be taken and made out by the officer of Excise of the whole quantity of flint glass for or in respect of which any maker of flint glass shall have been charged with duty upon the fluxed materials or metal or other preparations from which such flint glass as aforesaid shall have been made, after deduction of the gauged weight of all fluxed materials, metal, or other preparations taken account of by the officer, and laded out of the pot, according to the provisions of this act, and of the whole weight of manufactured flint glass and glass wares weighed by such maker of flint glass within such round or period of six weeks as aforesaid; and if upon such account being taken and made out as aforesaid the weight of such manufactured flint glass and glass wares as aforesaid shall exceed the quantity of such flint glass as aforesaid with which such maker of flint glass shall have been so charged with duty, after such deduction as aforesaid, by any quantity greater than the quantity of forty per centum of or upon the whole quantity of such flint glass as last aforesaid, such maker of flint glass shall be charged with and pay the duty of two-pence per pound upon each and every pound weight of such excess over and above any duty which such maker of flint glass shall have paid or may have been charged with upon the fluxed materials or metal or other preparations from which such glass as aforesaid shall have been made."

Penalty for stirring fire or raising any smoke or vapour to prevent officer from examining pots, metal, or glass in furnace or annealing arch

Sect. 70. "That every maker of glass who shall for one quarter of an hour after an officer of Excise shall have commenced to gauge or take an account of the metal in any pot, or to examine or take an account of the glass in any annealing arch or oven, stir or break up the fire, or add fresh coals or fuel thereto, in any furnace or annealing arch in his glass-house, or who shall wilfully raise smoke or any noisome or offensive vapour, whereby the officer may be prevented or hindered in

gauging or examining any pot or pots set in any furnace or annealing arch, or in examining the metal or materials in any pot set in any furnace, or in gauging or ascertaining the quantity or weight of any such metal or materials, or in examining or counting the tables, sheets, goods, wares, or bottles or utensils in any annealing arch or oven, shall forfeit one hundred pounds."

Penalty on concealing glass or materials to evade duty.

Sect. 71. "That every maker of glass who shall hide or conceal or cause to be hidden or concealed, or shall remove or convey away or deposit, or cause to be removed, conveyed away from or deposited in any place, any glass, glass wares or goods, bottles, vessels, or utensils whatever, or any metal or materials, to evade the duties chargeable thereon, or any part of such duties respectively, shall, over and above every other penalty to which he may in so doing become subject, forfeit five hundred pounds."

Who to be deemed glass makers.

Sect. 72. "That each and every person who shall make or manufacture any sort or kind of glass or glass wares (other than chandelier or ornamental drops, buttons, or beads), or any bottles or utensils, by melting any metal or materials, cullet, or old or broken glass in any pot, crucible, or other utensil, shall be deemed and taken to be a maker of glass, and shall be subject as such to all and every the enactments, provisions, regulations, restrictions, fines, penalties, and forfeitures of this act."

Drop pinchers to make entry with Excise, and produce invoices of their materials.

Sect. 73 provides and enacts, "That every person who shall carry on the trade or business of a drop pincher or maker of beads or buttons from glass shall duly make entry with the officer of Excise of all and every workshop, room, and place where he shall carry on such trade or business, or keep any materials for that purpose, and shall from time to time produce to the officer of Excise inspecting his workshop, room, or place, all materials by him used or employed in such trade or business, and shall at the same time, if required, deliver to such officer the invoice or invoices for all lump, paste, or cane glass received into his custody or possession; and every person who shall use or carry on such trade or business aforesaid without having made entry as aforesaid, or who shall refuse to produce any materials to any officer of Excise, or any such invoice, when required so to do, shall forfeit fifty pounds, and all glass goods and materials found in any such workshop, room, or place not entered shall be forfeited."

Shades or cylinders of uncoloured flint glass not to be opened or flattened out, except as hereby allowed.

Sect. 74 enacts, "That it shall not be lawful for any maker of flint glass, or any other person, to open or flatten out any shade or cylinder made of white or uncoloured flint glass, except as hereinafter provided, on pain of forfeiting all flint glass so opened or flattened out and one hundred pounds: Provided always, that makers of flint glass may open out and flatten cylinders of white or uncoloured glass into plates, such plates when opened and flattened out not being of less thickness than two tenth parts of an inch, nor of greater dimensions than fourteen inches square."

Glass benders to make entry, and not to have shades or cylinders of uncoloured flint glass in their possession.

Sect. 75, reciting that, for preventing frauds by persons other than makers of flint glass opening out and flattening shades or cylinders of flint glass, enacts, "That every glass bender or stainer, not being a maker of glass, who shall make use of any arch or oven for the heating, opening, or flattening, or bending or staining of glass, shall make entry with the officer of Excise of the district or division in which his premises shall be situate of every arch or oven, and of every room and place used by him for heating, opening, or flattening, or bending or staining glass, or keeping glass opened or flattened or stained or to be opened or flattened out or stained; and it shall not be lawful for any such bender or stainer of glass to receive or have in any arch or oven, or in any room or place so entered, any shade or cylinder made of white or uncoloured flint glass; and every person who shall make use of any arch or oven for heating, opening, or flattening, or bending or staining glass, without having made such entry as aforesaid, shall forfeit fifty pounds, together with all the glass found

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on such unentered premises; and every glass bender or stainer on whose premises any shade or cylinder of white or uncoloured flint glass shall be found shall forfeit the same, together with five pounds for every such shade or cylinder."

Officers of Excise may inspect premises of glass benders or stainers.

Sect. 76. "That it shall be lawful for any officer of Excise at all times to enter into and inspect the premises of every drop pincher, maker of glass beads or buttons, bender and stainer of glass, and to examine all glass therein; and if any such officer shall be obstructed or be hindered or prevented from so entering, or from examining any glass in any such premises, the drop pincher, maker of glass beads or buttons, bender, or stainer, at or in whose premises, such obstruction, hindrance, or prevention shall take place, shall forfeit fifty pounds."

Persons intending to export glass on drawing to give a packing notice (a).

Sect. 77. "That every person intending to export any glass as merchandize, and obtain the drawback thereon, shall give twelve hours' notice of his intention to pack the same for exportation on drawback to the officer of Excise who shall be appointed by the commissioners of Excise for that purpose, specifying in such notice the time and place when and where and the person on whose account such glass is intended to be packed, and the kind or description of glass to be packed; and such notice having been given, an officer of Excise shall attend at the time and place specified, and all the glass intended to be exported shall be produced to him, and shall be weighed and packed in his presence, and the packages containing the same shall be marked with the true weight of glass therein in the presence of such officer, and shall be secured with such fastenings and sealed with such seals or marks by such officer in such manner as the commissioners of Excise shall direct; and every such officer shall take an account of the kind and quantities of all such glass as shall be produced to him and be packed in his presence, and shall make a return thereof to the export officer of Excise, or officer acting as export officer at the port of exportation; and in weighing any glass for exportation the same shall be weighed to the nearest quarter of a pound on each draught, any fractions above a quarter of a pound being disregarded: Provided always, that if the person giving such packing notice shall not begin and proceed to pack up all such glass at the time mentioned therein such notice shall be null and void, and a like fresh notice shall be required before the packing up the same or any part thereof."

No glass, except spread or crown glass in tables and bottles, to be packed in any package but a cask, box, or chest.

Sect. 78 provides and enacts, "That no glass whatsoever, except as hereinafter provided, shall be packed for exportation on drawback in any crate or other package made or constructed with any void space or spaces in or between the component parts thereof, or any of them; but all glass shall be packed for exportation in casks, boxes, or chests only in which the exporter shall, previous to the packing the glass therein, have cut or sunk therein a sufficient number of circular cavities, each thereof not less than a quarter of an inch nor more than half an inch in depth, and not less than one inch nor more than an inch and a half in diameter, to receive the seal of the officer of Excise, and to protect such seal from being defaced, broken, or damaged; and each such cavity

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(a) Under the repealed act of the 17 Geo. III. c. 39, s. 25, respecting the forfeiture of foreign glass liable to duty, imported clandestinely. In the case where the master of a homeward-bound vessel coming up the *Thames* proved to have hired and sent off a boat and men, accompanied by one of his own crew, to bring away certain boxes of foreign and *British* glass lying on the sands on the *Essex* coast, to be landed at *Woolwich*, which they find and bring as far as *Gravesend*, where the whole is seized by the Custom-house officers. it was held to be sufficient evidence for a jury of a being concerned in *unshipping foreign glass* without payment of duty, and in unshipping *British* glass shipped for exportation, subjecting the master of the vessel to the penalties for both those offences, although the whole was one transaction. (*Attorney-General* v. *Towns*, 6 *Price*, 198).

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shall be cut or sunk one part thereof on the edge of the lid or cover, and the other on the side of the cask, box, or chest, so that each such seal may be conveniently placed by the officer of Excise, part on the wood of such lid or cover, and the residue on the wood of the side of each such cask, box, or chest; and no drawback shall be allowed or paid for or in respect of any glass packed otherwise than as aforesaid, save and except that nothing herein contained shall extend or be deemed to extend to prohibit the packing of whole or half tables of spread glass or crown glass, or any common bottles, in any crate or package whatsoever."

Penalty for placing any heavy substance with glass packed for exportation, or any other glass than that produced to officer, or for using any art to deceive officer, 200*l.*

Sect. 79 enacts, "That if any person shall fraudulently put or place any heavy substance or matter other than glass in any cask, box, or chest or package containing any kind of glass packing or packed for exportation, or shall (except as hereinafter provided) pack in any cask, box, or chest or package any other glass or other substance or article than the glass produced to the officer as to be packed and exported, or shall, by any art, contrivance, or device, prevent, hinder, or deceive any officer of Excise from or in taking a true account of the kind and weight of the glass packed, such person shall forfeit two hundred pounds, and every such cask, box, or chest, and package, with the contents thereof, shall be forfeited: Provided always, that nothing herein contained shall extend to prevent any person from packing for exportation on drawback any bottles containing dry or liquid articles, or from packing in the presence of the officer of Excise the frame of any lamp, or the case or stand of any cruets or bottles, or any similar thing belonging to any article of glass, in the same cask, box, or chest or package with the glass to which it shall belong; but in all such cases the officer of Excise, in weighing and taking his account for packing, shall weigh and take an account of such frame, case, or stand, or other thing separate and distinct from the glass to which the same shall belong, and shall distinguish such separate weight in the return to be made by him to the export officer of Excise as hereinbefore directed."

Penalty for opening chests, &c. after being packed, or damaging fastenings, &c.

Sect. 80. "That every person who (not being an officer of Excise or Customs) shall open any cask, box, or chest or package containing glass which shall have been packed for exportation, or shall wilfully destroy or deface any seal of the officer placed thereon, or damage any of the fastenings thereof, and every person who shall cut out, erase, obliterate, alter, or damage any figure, letter, or mark, cut, written, painted, branded, or made on any cask, box, or chest or package containing glass for exportation, expressing or denoting the weight of the glass contained in such cask, box, chest, or package, or the number thereof, shall forfeit two hundred pounds, and every such cask, box, or chest and package, with the contents thereof, shall be forfeited, and may be seized by any officer of Excise or Customs."

Any maker of glass for whom glass shall have been packed for exportation may give notice for altering directions or marks on change of destination, or may have glass unpacked for home consumption.

Sect. 81 provides and enacts, "That if any maker of glass by whom any glass shall have been packed for exportation shall, before giving notice for the shipping thereof, require to change the destination of such glass, and in consequence to alter any direction or any of the marks thereof, or, not having exported such glass, shall require to use the same for home consumption, it shall be lawful for such maker to give notice to the officer of Excise who shall have packed such glass, or to any other officer authorized to pack glass at his premises, of such change of destination, or desire to have the cask, box, chest, or package containing the glass opened for home consumption; and the officer of Excise to whom such notice shall be given shall attend at the premises of the said maker, and shall there see the directions and marks (except the marks of the weight of the glass therein) on the cask, box, chest, or package altered as required, or, in case of taking out for home consumption, shall wholly remove the seals and fastenings from such cask, box, chest, or package, and open the same; and in every such case such officer shall transmit to the export officer of Excise of the port a certificate of such alteration of direction or marks, describing the same, or of such

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Shipping notice to be given.

cask, box, chest, or package having been opened for home consumption."

Sect. 82 enacts, "That every person intending to export any glass on drawback shall, by himself or his agent, give to the export officer of Excise, or officer acting as such at the port of exportation, a notice in writing of his intention to ship such glass six hours at least before such shipment shall be made, in which notice shall be specified the number of packages to be shipped, with the respective marks or numbers thereon, and the quantity and kinds of description of glass in each package, together with the rate and amount of the duty paid, and of the drawback claimed, and the value for home consumption of the whole of the glass to be shipped, distinguishing the quantities and kinds of glass, if more than one sort or kind, chargeable with a different rate of duty, or entitled to a different amount of drawback, is contained in the shipment; and such notice shall also specify the quay or place where the packages are then lying, and from which the same are to be shipped, and the time of shipment, with the name of the ship and the master thereof, and the place or port to which such glass is to be exported; and the person so intending to export such glass shall also, by himself or his agent, make a declaration before the export officer of Excise or officer acting as such as aforesaid, under the provisions of an act passed in the fifth and sixth years of his late Majesty's reign, intituled 'An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof; and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits,' and to make other Provisions for the Abolition of unnecessary Oaths,' that such packages, and the glass contained therein, are and is the same described and set forth in the account or certificate of the packing officer, and that, to the best of his knowledge and belief, the full duties of Excise have been charged and secured on such glass; and shall also give bond, with one or more sufficient surety or sureties, to be approved by the officer appointed by the commissioners of Excise, to take such bond in treble the value of the drawback, conditioned that such packages, with the glass therein, shall with all convenient speed be shipped and exported, and shall not be unpacked in any port or harbour of the United Kingdom, nor unloaded, unshipped, or relanded, or put on board any other ship or vessel in any part of the United Kingdom (shipwreck or other unavoidable accident excepted); and such notice having been given and such declaration made as aforesaid, and such security having been entered into, the officer of Excise receiving the same shall write his name upon the said shipping notice as a certificate of the requisites aforesaid having been complied with, and shall forward and transmit the said notice, with his name thereon, to the proper officer of customs at the port whose duty it may be to attend the shipping of such goods."

5 & 6 Will. 4, c. 62.

The glass to be produced to and shipped in presence of officer of Customs.

Sect. 83. "That all the said packages, with the glass therein, shall, at the time specified in the notice for shipping the same, be produced to the proper officer of Customs, who shall inspect and examine the same, and being satisfied that they are the packages specified in the shipping notice shall see them shipped in his presence, and certify such shipment on the shipping notice, and return the same to the export officer of Excise, or officer acting as such; and such export officer, having received back the said notice with the certificate thereon, shall deliver to the exporter or his agent a debenture in such form and with such particulars as the commissioners of Excise shall direct for the payment of the amount of drawback at the expiration of six weeks from the time of shipment."

Packages of glass for which notice for drawback has

Sect. 84. "That in every case where any notice for shipping glass on drawback shall be given, it shall be lawful for the officer of the Cus-

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been given may be examined by officers of Excise and Customs, and if found fraudulently varying from notice to be forfeited, with penalty.

toms to whom the packages containing such glass shall be produced for shipment, and for any other officer of Customs or of Excise, to open all or any of the packages mentioned in such notice, and unpack and examine the contents, and if the same are found correct shall, at his own expense, to be allowed him by the commissioners of Customs or Excise, as the case may be, cause the same to be carefully repacked, and the respective packages again secured and sealed; but if on such examination any package, or the contents thereof, shall be found to vary in any particular from the description contained in the shipping notice, so that a higher or greater sum than of right due shall have been claimed, or would in case such discovery had not been made have on the exportation of such glass been deemed payable, as drawback, or her Majesty in any respect defrauded therein, such packages, and the contents thereof, shall be forfeited, and may be seized by any officer of Excise or Customs, and the exporter thereof shall forfeit treble the value of the drawback sought to be obtained, or two hundred pounds, at the election of the commissioners of Excise."

Regulations for exporting common bottles in bulk.

Sect. 85 provides and enacts, "That it shall be lawful for any person to ship for exportation on drawback common bottles in bulk, not being packed in any package, and in such case the person intending to export the same shall not be required to give any packing notice to the officers of Excise, but such person shall, by himself or his agent, give to the export officer of Excise, or officer acting as such at the port of exportation, a notice in writing of his intention to ship such bottles twelve hours at least before such shipment shall be made, in which notice shall be specified the number of dozens of bottles to be shipped, and the weight per dozen, with the rate and amount of the duty charged, and of the drawback claimed thereon, and the value of such bottles for home consumption, and shall also specify the time of shipment, with the name of the ship and master thereof, and the quay or place where such vessel is then lying, and from whence the said bottles are to be shipped, and the port or place to which such bottles are to be exported; and the person intending to export such bottles shall also, by himself or his agent, make a declaration, before the export officer of Excise or officer acting as such, under the said provisions of the said act of the fifth and sixth years of his late Majesty's reign, that, to the best of his knowledge and belief, the full duties of Excise have been charged and secured on the said bottles, and shall also give bond, with one or more sufficient surety or sureties to be approved of by the officer appointed by the commissioners of Excise, to take such bond in treble the value of the drawback, conditioned that the said bottles shall with all convenient speed be shipped and exported, and shall not be unloaded, unshipped, or re-landed, or put on board any other ship or vessel in the United Kingdom, shipwreck or other unavoidable accident excepted; and such notice having been given and such declaration made as aforesaid, and such security having been entered into, the officer of Excise receiving the same shall write his name upon the said shipping notice as a certificate of the requisites aforesaid having been complied with, and shall transmit and forward the said notice, with his name written thereon, to the officer of Customs; and the person intending to export the said bottles shall provide on board the vessel in which the same are to be shipped sufficient scales and weights; and the officer of Customs attending on such vessel to whom the said shipping notice shall be transmitted shall see the said bottles shipped, and shall with the said scales and weights weigh or cause to be weighed in his presence the said bottles, or as many dozens thereof as he may deem necessary for ascertaining the correct amount of the weight of the number thereof which may be shipped; and such officer of Customs having seen the said bottles, or as many of them as the vessel may be capable of receiving, duly weighed and shipped, shall certify such shipment, with the number of dozens of bottles shipped and the weight thereof, on the said shipping notice, and

(7) *Glass.*

1 & 2 Vict. c. 44.

shall return the same to the export officer of Excise, or officer acting as such; and such export officer, having received back the said notice with the said certificate thereon, shall deliver to the exporter or his agent a debenture for the payment, in six weeks from the time of shipment, of the amount of drawback on the quantity and weight of bottles shipped according to the certificate of the officer of Customs: Provided always, that in case the whole quantity of bottles of which notice shall have been given shall not be shipped, so that a less amount of drawback will be payable than stated in the shipping notice, the officer of Excise who shall have received the bond shall, in the margin thereof, or by endorsement thereon, state the real amount of drawback to be payable, and in such case treble the amount of such real drawback shall be the penalty of the bond."

No drawback to be allowed on plate glass, unless exported in forms prescribed.

Sect. 86 enacts, "That no drawback shall be allowed or payable for or in respect of any unground or unpolished plate glass, nor for or in respect of any plate glass, unless the same shall be exported in rectangular plates of the size of six inches in length by four inches in breadth, at the least, and of not less thickness than one eight of an inch, and unless each and every plate thereof shall be perfectly ground and polished, and perfect and fit for use as and for ground and polished plate glass, and shall not have been previously in use."

No drawback to be allowed on flint glass unless properly manufactured;

Sect. 87. "That no drawback shall be allowed or payable on chandelier or ornamental drops of less weight than one ounce each, nor on any glass buttons or glass beads, nor on any flint glass goods or wares, which shall not be good, fair, and merchantable articles, perfectly manufactured of metal fully and properly fluxed or fused and finished by all rough, waste, and useless parts being removed therefrom, and of such quality as to be worth at least five-pence per pound, exclusive of the duty, if made for or if the same had been made into articles for home consumption, and which shall not have been previously in use."

nor on spread or crown glass, or German sheet glass.

Sect. 88. "That no drawback shall be allowed or payable on any spread or broad glass, or crown glass, or German sheet glass, unless the same shall be of good and merchantable quality, and well and perfectly made of metal properly fluxed or fused, and shall not have been previously in use."

Glass of greater specific gravity than 2,800 not entitled to higher drawback than flint glass.

Sect. 89. "That no glass exported of a greater specific gravity than two thousand eight hundred shall be entitled to drawback as plate glass, or spread or broad or crown glass, or German sheet glass; but all glass produced for exportation of a greater specific gravity than two thousand eight hundred, if in other respects entitled to drawback, and all coloured glass other than stained glass exported, shall be deemed and taken to be flint glass, and shall not be entitled to any higher rate of drawback than flint glass."

No drawback on bottles unless properly manufactured.

Sect. 90. "That no drawback shall be allowed or payable on any bottles or vessels or utensils of common bottle metal unless the same shall be sound and unbroken, without any cracks therein, and well and perfectly made of metal properly fluxed or fused, and which shall not have been previously in use."

Penalty on fraudulently packing or shipping or concealing or depositing glass, to obtain drawback

Sect. 91. "That every person who shall produce to any officer of Excise or Customs to be packed or shipped for exportation on drawback, or who shall pack or ship for exportation on drawback, any glass not entitled to drawback, or any other glass or other articles, matters, or goods other than the glass specified and described in the notice for packing the same, or produced to the officer to be packed, or who shall fraudulently remove, deposit, or conceal any glass with intent unduly to obtain any drawback, or any higher amount of drawback than he would otherwise be entitled to, shall, over and above all other penalties which he may thereby incur, forfeit treble the amount of the drawback sought to be obtained, or two hundred pounds, at the election of the commissioners of Excise; and all such glass or other articles, mat-

ters or goods shall be forfeited, and may be seized by any officer of Excise or Customs."

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Treasury may dispense with or alter regulations for improvement or preparation of glass for optical instruments, or for purposes of science (*a*).

Sect. 92, reciting that it is necessary to obviate any obstruction to the improvement, preparation, or selection of glass fitted for the purposes of optical instruments or the purposes of science, which might be caused by a strict adherence to the regulations for securing the duties on glass; enacts, "That it shall be lawful for the lords commissioners of her Majesty's Treasury from time to time to dispense with or alter the whole or any part of the said regulations, or to remit the whole or any part of the duty, and to prescribe such other conditions and securities as they may judge necessary or expedient for the improvement or better preparation and selection of glass fitted for the purposes of optical instruments or for the purposes of science."

Repeal of former acts.

Sect. 93 repeals from and after the commencement of this act the several acts following, so far as the same relate to duties of Excise on glass, or contain any regulations for collecting, managing, or securing the duties on glass, but no further, that is to say, the 12 Geo. II. c. 12; the 17 Geo. III. c. 39; the 26 Geo. III. c. 77; the 27 Geo. III. c. 28; the 28 Geo. III. c. 37; the 32 Geo. III. c. 40; the 34 Geo. III. c. 27; the 35 Geo. III. c. 114; the 45 Geo. III. c. 30; the 47 Geo. III. sess. 2, c. 30; the 49 Geo. III. c. 63; the 51 Geo. III. c. 69; the 52 Geo. III. c. 77; the 54 Geo. III. c. 97; the 55 Geo. III. c. 113; the 56 Geo. III. c. 108; the 58 Geo. III. c. 33; the 59 Geo. III. c. 104; the 59 Geo. III. c. 115; the 6 Geo. IV. c. 117; the 7 & 8 Geo. IV. c. 40; the 9 Geo. IV. c. 48; the 2 & 3 Will. IV. c. 102; and the 4 & 5 Will. IV. c. 77: Provided always, that all duties charged and arrears of duties incurred under the said acts, and all penalties incurred for any offence or offences against the provisions hereby repealed, or any of them, committed before the commencement of this act, may be sued for, levied, and recovered under the said acts, or any of them, as fully and effectually as if this act had not been passed.

SCHEDULE TO WHICH THIS ACT REFERS.

DUTIES.

	£	s.	d.
PLATE GLASS.—For every hundred weight of the materials or metal or other preparations whatever, by what name soever the same may be called or known, which shall be made use of in the making of plate glass, and so in proportion for any greater or less quantity .	3	0	0
FLINT GLASS.—For every hundred pounds weight avoirdupois, and so in proportion for any greater or less quantity, of the fluxed materials or metal or other preparations whatever, by what name soever the same may be called or known, which shall be made for the purpose of making flint glass, the sum of . . .	0	6	8
SPREAD OR BROAD GLASS.—For every hundred weight of spread window glass, commonly called or known as broad glass, and so in proportion for any greater or less quantity . . .	1	10	0
CROWN GLASS AND GERMAN SHEET GLASS.—For every hundred weight of crown glass and German sheet glass, and so in proportion for any greater or less quantity	3	13	6
BOTTLES.—For every hundred weight of common bottles and all other vessels and utensils made of common bottle metal, and so in proportion for any greater or less quantity	0	7	0

(*a*) See the 3 Geo. IV. c. 72, s. 27, as to remission of duties on materials for rebuilding, &c. churches or chapels.

(7). *Glass.*

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DRAWBACKS.

PLATE GLASS.—For every square foot, superficial measure, of ground and polished plate glass made from materials or metal or other preparations for or upon which the duties payable in respect of plate glass shall have been charged, which shall be exported to foreign parts, and so in proportion for any greater or less quantity	0	2	9
FLINT GLASS.—For every one hundred pounds weight avoirdupois, and so in proportion for any greater or less quantity, of flint glass for or in respect of which, or of the materials, metal, or other preparation from which the same shall have been made, all Excise duties payable thereon shall have been duly charged, and which shall be exported to foreign parts	0	18	9
BROAD GLASS NOT CUT INTO PANES.—For every hundred weight of window glass, commonly called or known by the name of spread or broad glass, for which the duties shall have been charged, and which shall be exported in whole sheets or half sheets to foreign parts, or the islands of Guernsey, Jersey, Alderney, or Sark, and so in proportion for any greater or less quantity . . .	1	10	0
PANES OF SPREAD OR BROAD GLASS.—For every hundred weight of spread or broad glass for which the duty shall have been charged, and which shall be exported in panes to foreign parts, such panes being cut into regular rectangular figures of not less dimensions than six inches in length by four inches in breadth, and so in proportion for any greater or less quantity than a hundred weight .	1	15	0
CROWN GLASS AND GERMAN SHEET GLASS NOT CUT INTO PANES.—For every hundred weight of crown glass and German sheet glass for which the duties shall have been charged, and which shall be exported to foreign parts, or the Islands of Guernsey, Jersey, Alderney, or Sark, in shades or in whole tables or half tables or quarter tables, and so in proportion for any greater or less quantity than a hundred weight of such shades, tables, half tables, or quarter tables, calculating the drawback upon the weight of the whole table exported, although the same may be cut into half or quarter tables for convenience of exportation	3	13	6
PANES OF CROWN GLASS.—For every hundred weight of panes of crown glass for which the duties shall have been paid, and which shall be exported to foreign parts, such panes being in regular rectangular figures of not less dimensions than six inches in length by four inches in breadth, nor containing any part of the bullion or thick centre of the table from which such panes shall have been cut, and so in proportion for any greater or less quantity than a hundred weight	4	18	0
PANES OF GERMAN SHEET GLASS.—For every hundred weight of panes of German sheet glass for which the duty shall have been charged, and which shall be exported to foreign parts, such panes being in regular rectangular figures of not less dimensions than six inches in length by four inches in breadth, and in proportion for any greater or less quantity than a hundred weight . . .	4	0	0
For every hundred weight of common bottles, and of all other vessels and utensils of common bottle metal, for which the duties shall have been paid, and which shall be exported, and in proportion for any greater or less quantity	0	7	0

3 & 4 Vict. c. 22.

1 & 2 Vict. c. 44.

By the 3 & 4 Vict. c. 22, intituled "*An Act to impose upon Broad or Spread Glass the same Duties of Excise that are payable upon German Sheet Glass,*" after reciting that an act was passed in the second year of her Majesty's reign, intituled "An Act to consolidate and amend the Laws for collecting and securing the duties of Excise on Glass, whereby,

ty of Excise of one pound ten shillings was
ed weight of spread window glass commonly
glass, and also a duty of three pounds thirteen
on every hundred weight of crown glass and
nd whereas an act was passed in the third year of
intituled "An Act to remove Doubts as to the
he Duties of Excise on Glass," in order to prevent
oad glass being charged at the said duty of one pound
exported when cut up at a higher rate of drawback
would be entitled to according to the duty paid: and
ast-recited act has not been found sufficient to prevent
therein recited; and it is therefore necessary to repeal
y of one pound ten shillings the hundred weight payable
spread glass, and to subject such glass to the same rate of
charged and paid on German sheet glass, and to alter the
s accordingly; and it is also expedient to amend the first-
ct, and to repeal the said last-recited act; enacts, "That from
the fifteenth day of August one thousand eight hundred and
e said duty of one pound ten shillings for every hundred weight
d or spread glass shall cease and determine, save and except as to
arrears thereof; and in lieu thereof all broad or spread glass shall
charged with and pay the same amount of duty for every hundred
ight thereof as by law is payable on German sheet glass made and
manufactured in the Kingdom."

3 & 4 Vict. c. 22.

2 & 3 Vict. c. 25.

The duty of 1*l.* 10*s.* per cwt. on broad glass to cease, and in lieu thereof all broad glass to be charged 3*l.* 13*s.* 6*d.* the cwt.

Sect. 2. "That from and after the first day of January one thousand eight hundred and forty-one there shall be allowed and paid, on all broad or spread glass exported as merchandize under the provisions of the said first-recited act, the same drawbacks as are allowed and paid on German sheet glass, according as the same may be exported in whole or half or quarter tables or sheets, or be cut into panes."

Drawbacks on German sheet glass to be allowed on broad glass exported.

Sect. 3. "That in every case where any spread or broad glass, crown glass, or German sheet glass shall be deposited or placed in the annealing arch or oven in two or more rows or piles of tables or sheets, the maker of such glass shall, in the declaration by the said first-recited act required of the true number of tables or sheets deposited, and the spaces occupied and unoccupied by such glass, specify the true number of inches in length occupied by each row or pile of tables or sheets, from the back or bottom of the annealing arch or oven to the first or front table or sheet of glass of each such pile or row respectively, and the number of inches unoccupied between such first or front table or sheet of each row or pile of glass respectively, and the grating at the mouth of the arch; and if any variation in the proportions in the said act specified shall be found in the whole number of the tables or sheets of glass deposited and declared, or in the number of inches declared as occupied or unoccupied by any one row or pile of glass, the penalties by the said act imposed shall, according to the circumstances of the case, be incurred."

Makers of broad, crown, and German sheet glass to give in their declaration the spaces occupied and unoccupied by each pile of tables or sheets in the annealing arch.

Sect. 4. "That no maker of German sheet glass shall, in the declaration of the number of shades made in any journey or making, include any cylinder cropt or prepared as for being opened and flattened; and no articles shall be deemed to be shades, or be allowed to be deposited in the room for unannealed goods, or declared as shades, but such as are closed at one end, and were commonly known as shades, before the passing of the said first-recited act; and all cylinders and other glass not being shades which shall be deposited in the room of shades not requiring to be annealed, or be included in any such declaration, shall be forfeited."

Cylinders
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Sect. 5 of 1 & 2 Vict. c. 44, s. 60, repealed.

Sect. 6. "That all spread or broad glass, or crown or German sheet glass, which shall be made of greater thickness than one-ninth of a inch in the foot superficial, exclusive of the selvage or rim thereof, a of the centre or bullion of crown glass, shall be forfeited."

(7). *Glass.*

3 & 4 Vict. c. 22.

1 & 2 Vict. c. 44, s. 61, repealed.

Sect. 7. "That so much of the said first-r no glass shall be deemed or allowed as spread not be cut and opened whilst the same is war cool, after being blown, but that all such gla blown, shall be allowed to become cold before opened, shall be deemed and taken to be German be charged with duty accordingly,' shall be and the pealed."

2 & 3 Vict. c. 25, repealed.

Sect. 8. "That the said recited act of the third year reign shall be and the same is hereby repealed."

Reduction of allowances where pot containing plate glass materials shall not be filled at least two-thirds full.

Sect. 9, reciting that by the said recited act of the seco Majesty's reign certain allowances are directed to be made the duty on plate glass of one-third of the metal or materia in every pot used for the making of blown plate glass, and the metal or materials contained in every pot used for the cast plate glass, enacts, "That the said allowance shall not be made by the officer of Excise in charging the duty in any case the pot shall not when gauged be filled or charged with metal rials to at least two-thirds of the quantity or weight of metal or m which according to the original gauge and calculation of the offic Excise the whole pot shall be denoted to be capable of containing, in every case in which any pot shall not be filled or charged to at le two-thirds of the quantity or weight of metal which such pot shall, a cording to such original gauge and calculation, be denoted to be capable of containing, except in case of accident, no greater allowance shall be made or given than one-fourth of the metal or materials contained therein if for blown plate glass, or one-third of the metal or materials if for cast plate glass."

Makers of plate glass desirous of working out bottoms of their pots to give notice, and duty to be charged on quantity worked.

Sect. 10. "That if any maker of plate glass shall be desirous of manufacturing or working out any of the metal or materials in the bottom of any pot or pots in respect of which the allowance of four inches and two inches respectively at the bottom of the pot is by the said recited act of the second year of her Majesty's reign directed to be made in charging the duty on plate glass, such maker shall, twenty-four hours before beginning to work out any such metal or materials, give notice in writing of such his intention to the officer of Excise; and it shall be lawful for such maker thenceforth, and until he shall give a notice to discontinue such working (such notice of discontinuance not to be given at any less time than one week from the delivery of the former notice), to manufacture and work out the said bottoms, and in such case the metal or materials, or so much thereof as shall be worked out, shall be chargeable and charged by the officers of Excise with the duty on the materials or metal or other preparations made use of in the making of plate glass; and every manufacturer of plate glass who shall manufacture or work out any part of the metal or materials at the bottom of the pot in respect of which such allowance respectively shall have been made, without having given such notice as aforesaid, shall forfeit fifty pounds."

orking out with- notice, 50*l.*

GLASS; MURIATE OF POTASH.

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97.

By 53 Geo. III. c. 97, intituled "*An Act for allowing Glass Makers to dispose of Muriate of Potash, arising in the manufacture of Flux for Glass, for use in the manufacture of Alum, and for charging a duty of Excise thereon,*" it is enacted, by sect. 1, "That it shall and may be lawful for any maker or makers of glass in Great Britain to deliver from any such workhouse, warehouse, storehouse, room, or other place entered by any such maker or makers of glass, to any maker or makers of alum, any muriate of potash for the purpose of being used in the manufacture of lum, upon bond or security being given by such maker or makers of um, in double the duty of such muriate of potash, that all such mu- e of potash shall be really and truly employed, spent, and consum-

may

(7). *Glass; Muriate of potash.*

53 Geo. 3. c. 97.

by such maker or makers of alum in the manufacture of alum; which bond or security shall be discharged, upon the said maker or makers of alum, or his or their agent or chief workman, making oath before the collector of Excise of the collection in which the alum-works to which such muriate of potash shall be permitted shall be situated (which oath such collector is hereby authorized and empowered to administer), that all the said muriate of potash, for which such bond or security shall have been given, was made use of in the manufacture of alum there, and for no other purpose whatsoever; and the supervisor or officer of Excise under whose survey such maker or makers of alum shall then be at the same time certifying his belief of the truth of the matters sworn to by such maker or makers of alum, or his or their agent or chief workman."

Alum makers to make entry of places for keeping potash.

Sect. 2. "Provided always, that before any maker or makers of alum shall be permitted to receive or to have delivered for him, her, or them any such muriate of potash, such maker or makers of alum shall make true and particular entry in writing of every workhouse, warehouse, storehouse, room, and other place by him or them respectively intended to be made use of in or for the keeping of muriate of potash, and in and for the using thereof in the manufacture of alum, at the office of Excise within the compass or limits whereof such workhouse, warehouse, storehouse, room, or other place respectively shall be situated; and if any maker or makers of alum shall receive or have delivered to or for him, her, or them any such muriate of potash, without having first made such entry as aforesaid, such maker or makers of alum so offending shall, for every such offence, forfeit and lose the sum of one hundred pounds, together with all the muriate of potash which shall at any time be found in any workhouse, warehouse, storehouse, room, or other place by such maker or makers of alum made use of in or for the keeping of muriate of potash, whereof no such entry as last aforesaid shall be made."

Penalty.

Samples taken by officer.

Sect. 7. "That it shall and may be lawful to and for any officer or officers of Excise, and all such officers are hereby authorized and empowered to take, at any time or times, a sample or samples of any muriate of potash, or other materials alleged or pretended to be or passing under the denomination of muriate of potash, at any time in the custody or possession of any maker or makers of glass, or in the custody or possession of any maker or makers of alum, paying for the same (if demanded) the value thereof; and in case any maker or makers of glass, or any maker or makers of alum, shall refuse to permit any such officer or officers to take any such sample or samples as aforesaid, upon his or their paying for the same (if demanded), such maker or makers of glass, or maker or makers of alum, so offending, shall, for each and every such offence, forfeit and lose the sum of one hundred pounds."

Penalty.

Permits granted for the removal of muriate of potash.

Sect. 8. "That where any maker or makers of glass shall have occasion to remove any muriate of potash from any such workhouse, warehouse, storehouse, room, or other place by him, her, or them entered as being intended to be made use of for the making or keeping mineral alkali or flux for glass, the officer or officers of Excise, of the respective divisions or places where such entered workhouse, warehouse, storehouse, room, or other place shall be situated, shall, without fee or reward, from time to time, upon a request note being made and delivered by such maker or makers of glass, according to the directions of this act, grant and give a permit in writing, signed by the said respective officer or officers, expressing the quantity of all such muriate of potash so to be removed, and expressing the name and names of the person or persons from whom the same is intended to be removed, and to whom the same is to be removed, and that the duty for or in respect of such muriate of potash so intended to be removed has been paid; and all officers of Excise granting or giving any such permit shall therein limit and express the time within which the said muriate of potash in such permit mentioned shall be removed from the workhouse, warehouse,

(7). *Glass; Muriate of potash.*

53 Geo. 3, c. 97.

storehouse, room, or other place of the maker or makers of glass taking out such permit, and also the time within which the said muriate of potash shall be delivered and received into the workhouse, warehouse, storehouse, room, or other place of the maker or makers of alum to whom the same is permitted to be sent."

Note specifying certain particulars delivered before permits granted.

Sect. 9. "That no permit for the removal of any such muriate of potash shall be granted, or be valid, unless such maker or makers requiring the same shall make and send or deliver to the officer or officers of Excise hereby authorized to grant such permit a request note in writing, specifying the name of the maker or makers of alum to whom such muriate of potash is intended to be sent, the quantity of such muriate of potash intended to be removed, and for the removal of which such permit is required, and also the number and contents of the casks or other packages containing the same, and whether the same is to be removed by land or by water, and by what mode of conveyance such muriate of potash is intended to be sent."

Muriate of potash admitted into possession of alum maker without permit.

Sect. 10. "That no muriate of potash shall be brought into any workhouse, warehouse, storehouse, room, or other place made use of by any maker or makers of alum, without an authentic permit granted and given according to the directions of this act, which permit shall be produced to and left with the officer of Excise under whose survey such maker or makers of alum shall then be, on pain of forfeiting all such muriate of potash so brought in without such permit."

Penalty.

On receipt of muriate of potash, notice to officer.

Sect. 11. "That all and every maker and makers of alum shall, within six hours next after any such muriate of potash shall be received or delivered at or into any workhouse, warehouse, storehouse, room, or other place to him, her, or them belonging, give to the officer of Excise under whose survey he, she, or they shall then be notice in writing of the receipt and delivery thereof; and if any maker or makers of alum shall neglect or refuse to give any such notice, such maker or makers so offending shall, for each and every such offence, forfeit and lose the sum of 50*l.*"

Penalty.

Decrease of one pound in 100 allowed.

Sect. 12. "That in case in the muriate of potash brought in to be used, stored, or deposited at any such alum work or works for the purpose of being used in the manufacture of alum, any decrease shall be found exceeding the rate of one pound in every hundred-weight of such muriate of potash specified in the permit which shall accompany the same, the maker or makers of alum to whose use or to whose account the said muriate of potash was so delivered at such work or works as aforesaid shall forfeit and lose the sum of 50*l.*"

Penalty.

Maker of glass to keep account of muriate of potash delivered to alum works, and return same to Excise.

Sect. 13. "That all and every maker and makers of glass shall respectively daily and every day enter in a book or in a paper to be provided for that purpose, an exact and particular account of each and every parcel, quantity, or load of muriate of potash and the weight thereof, sold, delivered, or sent out by such maker or makers of glass, with the name of the maker or makers of alum to or for whom every such quantity of muriate of potash was so sold, delivered, or sent out, and the place where his, her, or their alum-works at which the same is to be or was delivered, and such book or paper shall be returned to the next officer of Excise every six weeks, and the truth of the entries made therein shall be then and there verified upon the oath of such maker or makers, or his, her, or their chief workman or agent, before the proper collector or supervisor of Excise, and the several and respective collectors and supervisors of Excise are hereby authorized and required to administer such oath accordingly; and in case any such maker or makers of glass shall neglect or refuse to keep such book or paper, or to make such entries therein, according to the true intent and meaning of this act, or shall neglect or refuse to return the same as hereinbefore directed, or to verify the said entries or any of them upon oath, such maker or makers of glass shall, for each and every such offence, forfeit and lose the sum of one hundred pounds."

Penalty.

(7). *Glass; Muriate of potash.*

53 Geo. 3, c. 97.

Sect. 14. "That all and every such maker or makers of glass shall, within one week after he, she, or they shall have or ought to have made such entry upon oath as last aforesaid, pay and clear off all the duties for and in respect of muriate of potash, which shall be due from him, her, or them respectively; and that every such maker or makers of glass, who shall neglect or refuse to make such payment as aforesaid, shall forfeit for every such offence double the sum of the said duties whereof the payment shall be so neglected as aforesaid."

Duty cleared in a certain time.

Penalty.

Sect. 15. "That it shall and may be lawful to and for the officers of Excise, or any or either of them, from time to time and at all times, by day and by night, upon his or their request or demand (but if in the night, then in the presence of a constable or other lawful officer of the peace), to enter into all and every the workhouses, warehouses, storehouses, rooms, and other places made use of by any maker or makers of glass, or by any maker or makers of alum, in or for the storing or keeping of muriate of potash, or any other matter or material alleged or pretended to be or passing under the name or denomination of muriate of potash, and by weighing or otherwise to take an account of the quantity and quality of all the muriate of potash or other matters or materials alleged or pretended to be or passing under the name or denomination of muriate of potash which shall at any time be in the custody or possession of any such maker or makers of glass, or of any such maker or makers of alum."

Officers may at a times enter premises.

Sect. 16. "That all and every maker or makers of glass, and all and every maker and makers of alum, shall, and he, she, and they respectively is and are hereby required to provide and keep proper, sufficient, and just scales and weights at the place or places where he, she, or they respectively shall have or keep any muriate of potash, and shall, at his, her, or their own expense, find, provide, and affix a proper hook or staple in a proper place, to be approved of in writing by and under the hands of the respective surveyors or supervisors of Excise of the division or district in which such place shall be situate, and also permit and suffer any officer or officers of Excise to use the same for the purpose of weighing and taking an account of the muriate of potash which shall at any time be in the custody or possession of any such maker or makers of glass or maker or makers of alum respectively; and if any such maker or makers of glass, or any such maker or makers of alum, shall neglect or refuse to provide or to keep such scales and weights, or either of them, or shall not, at his, her, or their own expense, find, provide, and affix a proper hook or staple in a proper and convenient place, to be approved as aforesaid, or shall not permit or suffer any officer or officers of Excise to use the same as aforesaid, or if any such maker or makers of glass, or any maker or makers of alum, shall, in the weighing of any muriate of potash, make use of, or cause or procure or suffer to be made use of, any false, unjust, or insufficient scales or weights, or shall practise any art, device, or contrivance by which any such officer or officers shall or may be hindered or prevented from taking the just and true weight and ascertaining the true quantity of any such muriate of potash, then and in every such case such maker or makers of glass, or maker or makers of alum (as the case may be), shall, for every such offence, forfeit the sum of one hundred pounds, together with all such false, unjust, or insufficient scales and weights respectively."

Scales and weights provided to take account of weight of muriate of potash

Penalty.

Sect. 17 "That all and every maker or makers of glass, and all and every maker or makers of alum, shall, when and so often as he, she, or they shall be thereunto required by the proper officer of Excise, with a sufficient number of his, her, or their servants, aid and assist to the utmost of his, her, or their power such officer or officers in weighing and taking an account of his, her, or their muriate of potash, on pain of forfeiting, for every neglect or refusal thereof, the sum of 100*l.*

Makers to assist officers in taking account of weight.

Penalty

Sect. 18. "That if any person or persons shall take, remove, or carry away any muriate of potash, with intent to evade the duty by this act imposed, every person so offending shall forfeit the sum of fifty pounds,

Removing muriate to evade duty.

Penalty.

(7). *Glass; Muriate of potash.*

and all the muriate of potash so taken, removed, or carried away shall be forfeited."

53 Geo. 3, c. 97.

Concealing potash.

Penalty.

Sect. 19. "That in case any muriate of potash shall be deposited, hid, or concealed in any place or places whatsoever, with an intent to defraud his Majesty of any of the duties by this act imposed, such muriate of potash shall be forfeited, and shall and may be seized by any officer or officers of Excise, and the person or persons in whose custody the same shall be found shall forfeit the sum of one hundred pounds; and, the better to enable such officer or officers to discover such muriate of potash so forfeited, if any such officer or officers shall have cause to suspect that any such muriate of potash shall be so deposited, hid, or concealed in any place or places whatsoever, then and in every such case, if such place or places shall be within the limits of the chief office of Excise in London, upon oath made by such officer or officers before the commissioners of Excise in England for the time being, or any two or more of them, or before one or more justice or justices of the peace of the county, city, or liberty where such place or places shall be, or in case such place or places shall be in any other part of Great Britain, upon oath made by such officer or officers before one or more justice or justices of the peace for the county, riding, shire, division, or place where such officer or officers shall suspect the same to be deposited, hid, or concealed, setting forth the ground of his or their suspicion, it shall and may be lawful to and for the said commissioners, or any two or more of them, or the justice or justices of the peace respectively, as the case may require, before whom such oath shall be made, if they or he shall judge it reasonable, by special warrant or warrants under his or their respective hands and seals, to authorize and empower such officer or officers by day or by night, but if in the night-time, then in the presence of a constable or other officer of the peace, to enter into all and every such place and places where he or they shall so suspect such muriate of potash to be so deposited, hid, or concealed, and to seize and carry away all such muriate of potash which he or they shall then and there find so forfeited."

Muriate of potash from glass houses used only in manufacture of alum.

Penalty.

Sect. 20. "That in case any maker or makers of alum, to whom or to whose use or on whose account any such muriate of potash shall be delivered from any workhouse, warehouse, storehouse, room, or other place belonging to or made use of by any maker or makers of glass, or in case any other person or persons shall make use of or employ such muriate of potash, or any part thereof, to or for any use or purpose other than in the manufacture of alum, or shall, after any such muriate of potash, or any part thereof, shall have been used in the manufacture of alum as aforesaid, make use of or employ the *residuum, caput mortuum*, or any remains thereof, for any other purpose than in the manufacture of alum, the maker or makers of alum or other person or persons so offending shall, for each and every such offence, forfeit and lose the sum of 100*l*."

Proof of muriate of potash to lie on

Sect. 21. "That if any question shall arise, whether any substance matter, or material, substances, matters, or materials, which shall be seized as and for muriate of potash forfeited under or by virtue of this act, be muriate of potash, the proof of such substance, matter, or material, substances, matters, or materials, not being muriate of potash, shall lie upon the owner or claimer thereof."

How muriate of potash weighed.

Sect. 22. "That in all cases where any officer or officers of Excise is or are authorized, empowered, or required to ascertain the quantity of muriate of potash by weight, no less quantity of such muriate of potash shall be weighed at one draft than an hundred-weight; and every such officer or officers, in the weighing any muriate of potash, shall give the turn of the scale in favour of the crown, and in lieu thereof shall make an allowance at and after the rate of five pounds weight in every half of a ton of such muriate of potash."

Obstructing officers.

Sect. 23. "That if any person or persons whatsoever shall assault, resist, oppose, molest, obstruct, or hinder any officer or officers of Excise in the due execution of this act, or of any of the powers or authorities

(7). *Glass; Muriate of potash.*

53 Geo. 3, c. 97.

hereby given or granted to any such officer or officers, or shall by force or violence, after any such officer or officers shall have seized any muriate of potash, or any substance, matter, or material, substances, matters, or materials, as or for muriate of potash forfeited under or by virtue of this act, rescue or cause to be rescued any such muriate of potash, or substance, matter, or material, substances, matters, or materials, or shall attempt or endeavour so to do, all and every such person or persons so offending shall, for each and every such offence, forfeit and lose the sum of 100*l.*"

Penalty.

Bribing officers, &c.

Sect. 24. "That if any person or persons whatsoever shall give or offer to give any bribe, recompense, or reward whatsoever to any officer or officers of Excise, in order to corrupt, persuade, or prevail upon any such officer or officers either to do or perform any act or acts, thing or things whatsoever, contrary to the duty of such officer or officers in the execution of this act, or to neglect to do or perform any act or acts, thing or things whatsoever, belonging or appertaining to the business or duty of such officer or officers in the execution of this act, or to connive at or conceal any fraud or frauds relating to any of the regulations by this act prescribed, or not to discover the same, all and every the person or persons so offending shall, for each and every such offence (whether such offer or proposal be accepted or not), forfeit and lose the sum of 500*l.*"

Penalty.

Glass makers or alum makers not to act as justices.

Sect. 25. "That no person whatsoever being a glass-maker or alum-maker, or who is or shall be in anywise interested or concerned in the trade or business of making or dealing in glass or alum respectively, shall, during such time as he, she, or they shall be so interested or concerned in the trade or business of making or dealing in glass or alum, act as a justice of the peace in any matter or thing whatsoever which shall in anywise concern the execution of the powers or authorities given or granted by this act; and if any person or persons shall, contrary to the true intent and meaning of this act, presume to exercise any such powers or authorities, or to do any act hereby authorized to be done by any justice or justices of the peace, all such acts so executed or done by such person or persons shall be utterly null and void to all intents and purposes whatsoever."

Penalties how recovered.

Sect. 26. "That all fines, penalties, and forfeitures imposed by this act shall be sued for, recovered, levied, or mitigated by such means, ways, or methods as any fine, penalty, or forfeiture may be sued for, recovered, levied, or mitigated by any law or laws of Excise, or by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, or in the Court of Exchequer in Scotland respectively; and that one moiety of every such fine, penalty, or forfeiture, shall be to his Majesty, his heirs and successors, and the other moiety to him, her, or them who shall inform, discover, or sue for the same."

Former acts extended to act 12 Car. 2, c. 24.

Sect 27. "That all and every the powers, directions, rules, penalties, forfeitures, clauses, matters, and things which in and by an act, made in the twelfth year of the reign of his late Majesty King Charles the Second, intituled 'An Act for taking away the Court of Wards and Liveries, and Tenures in Capite, and by Knight's Service and Purveyance, and for settling a Revenue upon his Majesty in lieu thereof,' or by any other law or laws now in force relating to his Majesty's revenue of Excise, are provided or established for managing, raising, levying, collecting, mitigating or recovering, adjudging or ascertaining the duties thereby imposed, or any of them, shall be practised, used, and put in execution, in and for the managing, raising, levying, collecting, mitigating, recovering, and paying the duties of Excise by this act imposed, and for preventing, detecting, and punishing frauds relating thereto, as fully and effectually, to all intents and purposes, as if all and every the said powers, rules, directions, penalties, forfeitures, clauses, matters, and things were particularly repealed and re-enacted in this present act."

(8). Hops.

[See also "*Ale and Beer,*" *ante*, 715.]

[9 Anne, c. 12; 6 Geo. I. c. 21; 6 Geo II. c. 37; 7 Geo. II. c. 19; 26 Geo. III. c. 5; 39 & 40 Geo III. c. 81; 45 Geo. III. cc. 94, 99; 48 Geo. III c. 134; 54 Geo. III. c. 123; 1 & 2 Geo. IV. c. 100; 1 & 2 Will. IV. c. 53.]

Duties.

The 9 Anne, c. 12, intituled "*An Act for laying a Duty upon Hops,*" by sect. 5, after reciting that for the better ascertaining, charging, collecting, levying, raising, uplifting, and securing the several rates and duties by this act set and imposed upon all sorts of hops of the growth of Great Britain, which shall be cured, and which shall or ought to be bagged within or during the term aforesaid (*i.e.* for four years), according to the true meaning of this act, and for preventing of frauds concerning the same, enacted "That such of the same rates and duties by this act granted (*a*), as are or shall be chargeable upon such hops of the growth of England, Wales, or the town of Berwick-upon-Tweed, shall be under the management of the commissioners and officers of Excise in England for the time being; and such of the duties as are imposed by this act on hops of the growth of Scotland, shall be under the management of the commissioners and officers of Excise in Scotland for the time being: and that all the monies arising by the said duties on hops of the growth of Great Britain (the necessary charges of raising and accounting for the same excepted), shall be paid into the receipt of her Majesty's Exchequer in England, distinctly and apart from all other branches of the public revenues, for the purposes in this act expressed, and under the like penalties, forfeitures, and disabilities as are to be inflicted by this act, for diverting or misapplying any the monies by this act appropriated, as is hereinafter mentioned."

British hops to be under commissioners of Excise.

Other statutes were afterwards passed respecting the duties on hops, but as the following act of the 43 Geo. III. c. 94, is the law at the present day, it will be sufficient to cite it only.

Present duties.

The 45 Geo. III. c. 94 (10th July, 1805), intituled "*An Act for reducing the Duty of Excise on Hops the growth of Great Britain,*" after reciting that it is expedient that the duty of Excise now payable on hops the growth of Great Britain should be reduced, enacts, "That from and after the passing of this act, one halfpenny of the duty of Excise of twopence-halfpenny per pound weight avoirdupois granted by an act passed in the forty-third year of his present Majesty's reign, intituled, 'An Act to repeal the Duties of Excise payable in Great Britain, and to grant other Duties in lieu thereof,' on hops the growth of Great Britain, shall cease and determine" (*b*).

One halfpenny of Excise duty of 2½d. per pound granted by 43 Geo. 3, c. 69, to cease.

By the 9 Anne, c. 12, s. 6, it is enacted, "That all and every person and persons whatsoever, who, on or before the 1st day of August, in the year of our Lord 1711, shall have any hops planted or growing within or upon any ground whatsoever in Great Britain, for sale or not for sale, shall, on or before the same 1st day of August, 1711, give or send notice in writing under his, her, or their hands, at the office of Excise next to the place, or to the officer for the said duties of the district where such hops are or shall be planted or growing, of all the hop-grounds then in his, her, or their possession, and of the name or names of the parish, township, or place, parishes, townships, or places wherein the same do lie, and the name or names of the owners, tenants, or occupiers thereof

Planters to give notice to officer by 1st August 1711, of hop grounds, &c.

(*a*) See *post*, for the present rate of duties, the 45 Geo III. c. 94

(*b*) See 43 Geo. III. c. 69, *ante*, p. 636. The Schedule A. of that act, title, "*Hops,*" which says, "For every pound weight avoirdupois of hops growing or to grow in Great Britain, which shall be cured and made fit for use, to be paid by the respective owners or possessors thereof, 2½*d.*" must therefore be read as altered to 2*d.* by the 45 Geo. III. c. 94. This again will have to be increased, to determine the present amount of duty, at the rate of 5*l.* per cent. under the powers of the 3 Vict. c. 17.

respectively; and that from and after the said 1st day of August, 1711, during the continuance of the said duties upon hops, all and every person and persons whatsoever who shall plant or cause to be planted, or shall have growing any hops upon any ground whatsoever in Great Britain, for sale or not for sale, shall yearly, on or before the 1st day of August in every year, give or send like notice of all the hop-grounds wherein any hops shall be growing in every such year; and if any person or persons who shall plant, or cause to be planted or grow, any hops within or upon any ground whatsoever in Great Britain, shall neglect to give or send such notice in writing, of his, her, or their hop-grounds as aforesaid, within such time as is before mentioned, contrary to the true meaning of this act, then and in every such case the offender therein, for every such offence, shall forfeit and lose the sum of 40*s.* for every acre, by estimation, of such ground, and after that rate for a greater or lesser quantity."

on forfeiture of 40*s.* an acre.

Sect. 7 provides and enacts, "That the person or persons who are to give such notice as aforesaid shall not be obliged, for the doing thereof, to go or send farther than the next market town to the place where the said hops shall be planted or growing; and the officer who shall receive the said notice shall, within five days after such notice shall be given or sent to him, from time to time, enter the same in a book to be kept at the said next office for that purpose, upon pain of forfeiting, for every neglect therein, the sum of 40*s.* to the party whose notice shall not be so entered."

Notice to be given at next market town, and officer to enter it in five days, on penalty of 40*s.*

Sect. 8. "That no person or persons whatsoever shall at any time or times, from and after the 1st day of August, 1711, during the continuance of the said duties upon hops, make use of any oust, storehouse, or other place, or of any kiln, for curing or keeping of hops chargeable with any of the duties aforesaid, unless notice of such oust, storehouse, place, or kiln shall have been before given or sent in writing as aforesaid, upon pain of forfeiting the sum of 50*l.* for every offence."

No oust, storehouse, &c. to be used without notice, on penalty of 50*l.*

Sect. 9. "That all such hops as in any year, during the continuance of this act, shall grow in Great Britain as aforesaid, shall by the respective owners or planters thereof, within six weeks after the gathering or picking of the same, be brought to be cured and bagged at such ousts or other places to be notified as aforesaid, and none other, upon pain of forfeiting the sum of 5*s.* for every pound weight of the said hops which shall not be so brought, cured, and bagged as aforesaid."

Hops in six weeks after gathering to be brought to such oust, &c. on pain of 5*s.* per pound.

The notice requisite to be given before bagging hops, in the above section, is re-enacted in the following section of the 6 Geo. I. c. 21.

By the 6 Geo. I. c. 21, s. 25, "That from and after the said 1st day of August, 1720, the respective planters or owners of hops to grow in Great Britain, before they respectively shall or do begin to bag or to weigh his, her, or their hops, or any part or parts thereof, shall respectively give or send notice in writing under his, her, or their hands to the next officer of Excise, or to the proper officer for the said duty, of the particular day, and of the precise hour of such day, as well of his, her, or their beginning to bag, as also of his, her, or their beginning to weigh such their respective hops, and every part and parts thereof, which notice, as well as to such bagging, as also to such weighing of such hops as shall be either bagged or weighed in the first week of each respective planter's or owner's bagging and weighing, or either of them, shall be given or sent at least twenty-four hours before the particular time and times, when as well every such bagging, as also every such weighing, shall respectively begin; and such notice as aforesaid, as well as to every other bagging, as also as to every other weighing, of such hops as shall not be bagged and weighed in such first week, shall likewise be given or left by the space of at least forty-eight hours, as well before every such other bagging, as also before every such other weighing shall respectively begin; and if, after such notice given, he, she, or they shall not proceed to bag and weigh, or to bag or weigh, according to each re-

Planters of hops to give notice of precise time of bagging and weighing hops.

Twenty-four hours' notice to be given of bagging or weighing in first week,

and forty-eight hours for every other bagging, on pain of 50*l.*

(8). *Hops.*

spective notice, that then and in every such case, he, she, or they, before he, she, or they shall at any other time or times begin to bag and weigh, or to bag or weigh, his, her, or their hops, or any part or parts thereof, shall give or send the like notice as aforesaid; that is to say, twenty-four hours' notice of such bagging and weighing, or either of them, in such first week, and forty-eight hours' notice, as well of every such other bagging, as also of every such other weighing, or either of them respectively, under the pain of forfeiting and losing the sum of 50*l.* for every neglect and default of every such notice or notices, as aforesaid, in either of the respective cases before mentioned."

Owner of hops not obliged to give more than twenty four hours' notice of intention to weigh.

But by the 39 & 40 Geo. III. c. 81, s. 6, "No planter or owner of hops to grow in Great Britain shall at any time be obliged to give more than twenty-four hours' notice of his or her intention to weigh hops. Provided always, that the particular time to be specified in any such notice for the weighing of hops shall be between the hours of four in the morning and five in the evening, any thing in this or any other act of Parliament to the contrary in anywise notwithstanding."

Time of weighing between four in morning and five in evening.

No officer inferior to a supervisor shall be suffered to weigh hops between five in the evening and four in the morning, on penalty of 20*l.*

Sect. 7. "That no officer of Excise, inferior to the rank or degree of a supervisor of Excise, shall be at liberty to weigh or shall be permitted to weigh any hops at any oust, storehouse, or other place of any owner, planter, or grower of hops, between the hours of five in the evening and four in the morning; and if any such owner, planter, or grower shall permit or suffer any such inferior officer to weigh any such hops between the hours aforesaid, contrary to the directions of this act, every such owner, planter, or grower so offending shall, for each and every such offence, forfeit and lose the sum of 20*l.*"

Officer to attend bagging and weighing, and mark weight on the bag, and make entry and return accordingly.

By the 9 Anne, c. 12, s. 11, "That the proper officer of Excise for the district in which the said hops shall grow, or some other sworn officer of Excise, by appointment of the commissioners of that revenue, shall attend and be present at the bagging of every parcel of such hops as aforesaid, and at the weighing of the same, and shall cause the true weight of every such bag or pocket of the said hops, great or small, (such tare of the bag as is allowable by this act only excepted), to be plainly and visibly marked in one or more places upon every bag of the said hops; and shall then also cause an entry of the said weight (the tare being abated) to be made in his book, and shall thereof make return or report in writing to the respective commissioners of Excise, or such as they shall respectively appoint to receive the same, leaving a true copy (if demanded) of such report in writing under his hand with or for such planter or owner respectively; and such return or report of the said officer or officers shall be a charge upon the said planters or owners respectively; and if the said officer or officers shall refuse or neglect to give or leave a true copy of such report in writing with or for such planters or owners respectively, at the time of taking such account (upon demand as aforesaid), every such officer for such offence shall forfeit and pay the sum of 5*l.* to every such planter or owner respectively."

A copy of return to be left with planter.

Officer not leaving return, forfeit 5*l.*

Officer to make declaration.

Sect. 12. "That every officer who shall be empowered to make such charge as aforesaid, shall, in the first place, be sworn" (but now to make *declaration*) "for the due and faithful execution of his office; and the oath in that behalf shall and may be administered by all or any of the commissioners of Excise, or by any of her Majesty's justices of the peace, who shall give to such officer a certificate thereof."

10*l.* per cent. allowed for.

Sect. 13 provides and enacts, "That an allowance after the rate of ten pounds per centum shall be made upon the weight of every bag or pocket of hops to be weighed as aforesaid, great or small, for the tare of the same bag; anything herein contained to the contrary notwithstanding."

The 39 & 40 Geo. III. c. 81 (28th July, 1800), intituled, "An Act to repeal an Act made in the Fourteenth Year of the Reign of his present Majesty, intituled, 'An Act to prevent Frauds in the buying and selling

of Hops, and for the better collection of the Duty on Hops; and to prevent Frauds and Abuses in the trade of Hops,' after reciting that the 14 Geo. III. c. 68 has been found insufficient to answer the purposes thereby intended, and it is therefore expedient to repeal the said act, and in lieu thereof to make such provision as is hereinafter directed, proceeds to repeal the same.

Repeal of 14 Geo. 3, c. 68.

And by sect. 2 enacts, "That from and after the passing of this act, every owner, planter, or grower of hops, before he, she, or they shall begin to put any hops into any bag or pocket, shall mark or cause to be marked on the outside of each and every such bag or pocket, in large, plain, and legible letters or characters, with durable ink or paint, his, her, or their name or names and place of abode (*a*); and if any owner, planter, or grower of hops shall begin to put any hops into any bag or pocket without having marked or caused to be marked, in manner hereinbefore directed, the several matters and things hereinbefore required and prescribed, every such owner, planter, or grower, or other person or persons so offending, shall, for each and every such offence, forfeit and lose the sum of 20*l.*"

Owners, &c. shall mark the bags with their names, &c. before they put in any hops, on penalty of 20*l.*

Sect. 3. "That no owner, planter, or grower of hops shall bag any hops in any bag, the weight of which bag shall be greater in proportion to the gross weight of such bag and the hops contained therein than 10lbs. for every 112lbs. of the said gross weight of such bag and the hops contained therein; and if any owner, planter, or grower of hops shall bag any hops in any bag, the weight of which bag shall be greater in proportion to the gross weight of such bag and the hops contained therein than 10lbs. for every 112lbs. of the gross weight of such bag and the hops contained therein, then and in every such case, every owner, planter, or grower so offending shall, for each and every such offence, forfeit the sum of 20*l.*"

Hops shall not be bagged in bags of greater weight than in the proportion of 10lb. for every 112lb. of the gross weight of bag and hops, on penalty of 20*l.*

Sect. 4. "That when and as soon as any officer of Excise shall have weighed and taken account of any hops for the purpose of ascertaining and charging the duty thereon, such officer shall and he is hereby authorized and required to mark, or cause to be marked, in large legible figures, with durable ink or paint, on the outside of each and every bag or pocket containing such hops, the true gross weight of such bag or pocket of hops, together with the date of the year in which such hops were grown; and also with the true progressive number of such bag or pocket, according to the numbers of the bags or pockets of hops weighed and charged to each owner, planter, or grower of hops during the then current year or hop season; such number to be taken progressively, beginning one, two, and so onwards, according to the number of bags or pockets of hops weighed and charged to each owner, planter, or grower as aforesaid in each such current year or hop season; and if any person or persons shall counterfeit or alter, or cause, procure, or suffer to be counterfeited or altered, any or either of the matters or things hereinbefore directed to be marked, or caused to be marked, and so marked, or cause to be marked by any such owner, planter, or grower of hops, or so hereinbefore directed to be marked and so marked by any such officer as aforesaid, the person or persons so offending shall, for each and every such offence, severally forfeit and lose the sum of 100*l.*; and if any person or persons shall wilfully deface or obliterate any or either of the matters or things hereinbefore directed to be marked, or caused to be marked, and so marked by any such owner, planter, or grower of hops, or hereinbefore directed to be marked, and so marked by any such officer as aforesaid, or shall cause or procure any such matter or thing to be defaced or obliterated, or shall connive at any such matter or thing being so defaced or obliterated, the person or persons so offending shall, for each and every such offence, severally forfeit and lose the sum of 20*l.*"

Officer of Excise shall mark on bags the gross weight, with the year of growth, and progressive number according to number of bags charged to each owner for the season.

Persons counterfeiting the marks aforesaid shall forfeit 100*l.*; and for defacing marks shall forfeit 20*l.*

(*a*) See *post*, the 54 Geo. III. c. 123.

(8). *Hops.*

Hops shall not be removed from place of weighing before expiration of twelve hours, unless re-weighed by supervisor, on penalty of 50*l.*

By the 39 & 40 Geo. III. c. 81, s. 5. "*No owner, planter, or grower,* of hops growing or to grow in Great Britain, shall remove or convey away, or cause or suffer to be removed or conveyed away, any hops from the oust, storehouse, or other place where the same shall have been weighed, for the purpose of charging the duty, before the expiration of twelve hours next after such hops shall have been so weighed, unless the same shall sooner have been weighed or reweighed by the supervisor of Excise, to the end that such supervisor may have an opportunity to reweigh the same; and if, upon the reweighing of any such hops, any additional weight shall be found, such hops shall be liable to and chargeable with the duty of Excise imposed for or in respect of such hops, according to such last-mentioned weight; and if any such owner, planter, or grower shall remove or convey away, or cause or suffer to be removed or conveyed away, any such hops, contrary to the true intent and meaning of this act, the owner, planter, or grower of such hops so offending shall, for each and every such offence, forfeit the sum of 50*l.*"

Owners of hops shall keep scales and weights at place of weighing, and permit supervisor to use them; penalty, 50*l.*

By the 39 & 40 Geo. III. c. 81, s. 8. "All and every owner, planter, and grower of hops growing or to grow in Great Britain shall, and he, she, and they respectively is and are hereby required to keep sufficient and just scales and weights at his, her, or their ousts, storehouses, or other places where such hops shall have been so weighed, and also to permit and suffer any supervisor of Excise to use the same for the purpose of reweighing such hops; and if any such owner, planter, or grower shall neglect to keep such scales and weights, or either of them, or shall not permit or suffer any supervisor of Excise to use the same for the purpose aforesaid, he, she or they shall, for each and every such offence, forfeit the sum of 50*l.*; and if any such owner, planter, or grower shall, for the reweighing of any such hops, provide or make use of, or cause or procure or suffer to be provided or made use of, any false, unjust, or insufficient scales or weights, or shall practise any art, device, or contrivance by which any such supervisor of Excise may be hindered or prevented from taking the just and true weight of any such hops, then and in every such case such owner, planter, or grower shall, for each and every such offence, forfeit the sum of 100*l.*, together with all such false, unjust, or insufficient scales and weights respectively, and the same shall and may be seized by any supervisor or officer of Excise."

If unjust scales or weights, &c. shall be used, they shall be forfeited, and the owner forfeit 100*l.*

Owners, when required by supervisor, shall put hops into scale to be re-weighed, and assist him therein, on penalty of 50*l.*

Sect. 9. "That all and every owner, planter, and grower of hops growing or to grow in Great Britain shall, when and so often as he, she, or they shall be thereunto required by any supervisor of Excise, bring or cause to be brought to, and be put into and taken out of, the scale, all hops, belonging to such owner, planter, or grower, and which such supervisor shall be desirous to reweigh; and shall also, on the request of such supervisor, by themselves respectively, and with a sufficient number of their servants, aid and assist, to the utmost of their power, such supervisor of Excise in reweighing all such hops of such owner, planter, or grower, on pain of forfeiting, for every neglect or refusal thereof, the sum of 50*l.*"

Persons obstructing officers in execution of duty shall forfeit 100*l.*

Sect. 10. "That if any person or persons whatsoever shall assault, oppose, molest, obstruct, or hinder any officer or officers of Excise in the due execution of this act, or of any of the powers or authorities given by this act, all and every such person or persons so offending shall, for every such offence, severally forfeit the sum of 100*l.*"

Sect. 11. "That all fines, penalties and forfeitures imposed by this act, shall be sued for, recovered, levied or mitigated by such ways, means, or methods, as any fine, penalty, or forfeiture, may be sued for, recovered, levied, or mitigated, by any law or laws of Excise, or by action of debt, bill, plaint, or information, in any of his Majesty's courts of record at Westminster, or in the Court of Exchequer in Scotland respectively, and that one moiety of every such fine, penalty, or forfeiture, shall be to his Majesty, his heirs, and successors, and the other moiety to him or them who shall inform, discover, or sue for the same."

(8). *Hops.*

By sect. 14, planters were to pay and clear off all the said duties of hops within six months after being cured, bagged, or weighed. Great inconvenience, however, being found to arise from the various periods at which the duties on hops were payable, the following Act was passed, by which such payments are to be made at fixed times.

1 & 2 Will. 4, c. 53.

The 1 & 2 Will. IV. c. 53 (20th Oct. 1831), intituled "*An Act to regulate the payment of the Duties on Hops*," after reciting "that by the laws now in force for collecting the duties of Excise on hops, all planters and owners of hops are required, within six months after every parcel of hops shall or ought to have been cured, bagged, casked, or weighed, to clear off the duties of Excise charged on such hops: and whereas it is expedient to make the said duties on hops payable at two certain periods of the year, instead of requiring the whole to be cleared off within six months;" enacts, "that all duties of Excise of hops which shall have been charged since the 1st day of August, 1831, and all duties of Excise on hops which shall hereafter be charged, shall be paid and payable by the several persons respectively on whom the same shall have been or shall be charged by the officers of Excise, in manner following; (that is to say), one moiety of so much of the said duties as shall have been or shall be charged on any planter or owner of any hops shall be paid on the 1st day of March next after the said duties shall have been or shall be charged, and the other moiety of such duties on the 1st day of October following, in each year respectively; and every person on whom any duties on hops shall have been or shall be charged, who shall fail to pay the same at the respective times aforesaid, shall for each default forfeit double the sum by him due and payable."

Duties on hops to be paid on 1st of March and 1st of October.

Sect. 2 provides and enacts, "That nothing herein contained shall extend or be deemed to extend to diminish or in any way interfere with the powers and authorities given by an act passed in the 7th & 8th years of the reign of his late Majesty, intituled '*An Act to consolidate and amend the Laws relating to the collection and management of the Revenue of Excise throughout Great Britain and Ireland*,' (*a*) to the commissioners of Excise, to order the charging, demanding, and recovering of any duties of Excise at such times and in such manner as the said commissioners shall see fit to direct."

Not to interfere with powers given by 7 & 8 Geo. 4, c. 53, as to charging and recovering duties.

Sect. 15. "That all and every the officers of the said duty shall at all times, by day or by night, and (if in the night) then in the presence of a constable, or other lawful officer of the peace, be permitted, upon his or their request, to enter into the oust, storehouse, or other place made use of by any person or persons, within or during the said term, for the growing, curing, or keeping of hops, whereof such notice shall or ought to have been given as aforesaid, in order to his viewing the same, and discovering any frauds in relation to his Majesty's duties thereupon; and if any planter or owner of hops shall obstruct or hinder any of the said officers in the execution of the powers and authorities given to him or them by this act for the ascertaining and securing the said duties upon hops, the person or persons offending therein shall for every such offence forfeit and lose the sum of 20*l*."

Officer may enter oust, &c. to view.

By the 9 Anne, c. 12, s. 16, "That no planter or owner of hops, after the said first day of June, one thousand seven hundred and eleven, during the continuance of the said duties upon hops, shall (under pain of forfeiting the sum of 50*l*. for every offence) remove, carry, or send away, or suffer to be removed, carried, or sent away from his, her, or their oust, storehouse, or other place (whereof notice shall or ought to be given as aforesaid) any hops chargeable with the duty by this act imposed, until the same shall have been cured, bagged, and weighed, and the duties thereof shall be ascertained according to the true meaning of this act, unless in such cases where the officers of the said duties

Penalty on removing hops before duty is ascertained.

(*a*) See *ante*, p. 613, *et seq.*

(8). *Hops.*

(having due notice first given or left as aforesaid) shall nevertheless neglect to attend the bagging and weighing of the same."

Fraudulently concealing, forfeits 20*l.* &c.

Sect. 17. "That if any planters or owners of hops shall fraudulently hide or conceal, or cause or procure to be hid or concealed, any hops chargeable by this act, to the intent to deceive her Majesty of the just duties by this act granted, that then, and in every such case, the party so offending shall, for every such offence, forfeit the sum of £20, and all the hops so concealed and hid, to her Majesty's use."

Pickers of hops carrying off such hops, forfeits 5*s.* per lb. or sent to hard labour for a month.

Sect. 18. "That if any picker or gatherer of hops, or any other person or persons, shall privately carry off or convey any hops from the place of growing, or the place where the same shall be put in order to be cured, bagged, and weighed, with an intent to defraud her Majesty of her said duties, and the owner of the said hops, then and in every such case, the person or persons offending therein shall forfeit and lose the sum of 5*s.* for every pound of hops so clandestinely carried off and conveyed; and in every such case it shall and may be lawful for the officers of the said duties, not only to seize the hops so clandestinely carried off and conveyed, but also to apprehend the said offender or offenders, and carry him or them before one of her Majesty's justices of the peace of the county or place where such offence shall be committed; and in case the said offence shall be proved before the said justice of the peace, and the offender or offenders shall not forthwith pay down the penalties by this act imposed on such offender or offenders for the offences so proved on him, her, or them respectively as aforesaid, and no sufficient distress can be found to levy the same, it shall and may be lawful for the said justice of the peace to commit such offender or offenders to the house of correction, there to be whipt and kept to hard labour for any time not exceeding one month; and if any person or persons shall obstruct or hinder any officer or officers for the said duties in the execution of his or their offices, or the powers given them by this act, or shall beat or abuse the said officers, or any of them, in the execution of his or their offices, such person or persons shall, for every such offence, forfeit and lose the sum of £5; and in default of distress whereby to levy the same, it shall and may be lawful for any of her Majesty's justices of the peace, upon due proof of such offence, to commit such offender or offenders to the house of correction, there to be whipt and kept to hard labour, for any time not exceeding one month."

Persons obstructing officer forfeits 5*l.*

or sent to hard labour for a month.

Hops chargeable with all duties in arrear, &c.

Sect. 19. "That all the hops in the custody of any planter or owner of hops, or any other person or persons to the use of or in trust for such planter or owner, shall be liable and subject to and are hereby made chargeable with all the debts and duties for hops in arrear and owing by such planter or owner respectively, and to all penalties and forfeitures incurred by such planter or owner for any offence against this act; and that it shall and may be lawful in all such cases to levy debts and penalties, and use such proceedings as may lawfully be done by this act, in case the debtor or offender were the true and lawful owner of the same."

Hops may be put into casks.

By the 6 Geo. I. c. 21, s. 27, "That from and after the 1st day of August, 1720, it shall and may be lawful to and for such owners or planters of hops, if they shall think fit, to put the said hops into casks; such owner or owners, planter or planters, first giving the like notice of the time that he, she, or they intend to weigh, and put the said hops into casks, as he, she, or they are by law required to give of the bagging of hops respectively: and in case any owner or owners, planter or planters, shall put any hops into casks without such notice, then he, she, or they shall be liable to the like penalties as such owner or owners, planter or planters, would have been liable unto in case such hops so put into casks had been bagged without such notice."

Officers of Excise to attend the put-

Sect. 28. "That the officers of Excise, and others appointed by the commissioners of that revenue, shall in like manner attend and be pre-

sent at the putting hops into casks and barrels, as he is by law required to be at the bagging of hops; and shall cause every cask or barrel, into which hops shall be put, to be weighed, and the weight of each cask to be plainly and distinctly marked on such cask respectively; and shall likewise cause the weight of the hops contained in such cask to be plainly and distinctly marked on each cask respectively; and shall cause an entry of the weight of such hops to be made in his book (the weight of such cask or barrel being abated), and shall make the like report to the commissioners of that revenue, and leave a like copy with the owner or planter of such hops, and under the like penalties and forfeitures as in case such hops had been put into bags; and the owner or owners, planter or planters, of such hops shall, within six months after the putting hops into casks or barrels, pay and clear off the duties on hops so casked or barrelled under the like penalty as if the same had been bagged."

ting hops into casks, &c.

By the 48 Geo. III. c. 134 (30th June, 1808), intituled "An Act to amend the Laws relating to the marking of Bags and Pockets of Hops," after reciting that the laws in force at and immediately before the passing of this act, for preventing frauds and irregularities in the marking of bags and pockets, to be used for bagging hops, have been found insufficient for the good purposes thereby intended, and that further provisions are become necessary: it is enacted in

Sect. 1. "That from and after the 25th day of July, 1808, in addition to the particulars required by law to be marked on the outside of every bag and pocket of hops, there shall be marked by the owner, planter, or grower of hops, in the form and manner in which the before-mentioned particulars are required to be marked, the name of the parish and of the county in which the hops put into any such bags or pockets were or shall be grown (*a*); and if any owner, planter, or grower of hops shall presume to put hops into any bag or pocket before the same shall have been marked in the form and manner by this act directed and required, he, she, or they shall, for each and every such offence, forfeit 20*l*."

Bags and pockets of hops shall be marked with the parish and county of their growth, under penalty of 20*l*.

Sect. 2. "That if any person or persons shall counterfeit or wilfully remove, alter, erase, or obliterate, or cause, procure, or suffer to be counterfeited, removed, altered, erased, or obliterated, any of the marks directed and required by this act, or any other act or acts of Parliament in force at and immediately before the passing of this act, to be put or marked on bags or pockets of hops, all and every person or persons so offending shall, for every such offence, forfeit 20*l*."

Penalty on counterfeiting or erasing marks, 20*l*.

Sect. 3. "That all fines, penalties, and forfeitures imposed by this act shall be sued for, recovered, levied, or mitigated by such ways, means, or methods as any fine, penalty, or forfeiture may be sued for, recovered, levied, or mitigated by any law or laws of Excise, or by action of debt, bill, plaint, or information in any of his Majesty's courts of record at Westminster, or in the Court of Exchequer in Scotland respectively; and that one moiety of every such fine, penalty, or forfeiture, shall be to his Majesty, his heirs and successors, and the other moiety to him or them who shall inform, discover, or sue for the same."

Recovery and application of penalties.

And by the 54 Geo. III. c. 123 (23rd July, 1813), intituled "*An Act to amend an Act of the thirty-ninth and fortieth year of his present Majesty, to prevent Frauds and Abuses in the Trade of Hops;*" after reciting that it was enacted by the 39 & 40 Geo. III. c. 81 (amongst other things), that every owner, planter, or grower of hops, before he shall begin to put any hops into any bag or pocket, shall mark or cause to be marked on the outside thereof his name and place of abode; and reciting also, that by the 48 Geo. III. c. 134, it was enacted, that every owner, planter, or grower of hops, shall also mark on the outside of every bag or pocket of hops, the name of the parish and of the county in which the hops put

54 Geo. 3, c. 123.

(*a*) See the following enactment in the 54 Geo. III. c. 123.

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into any such bag or pocket shall be grown: and reciting that many persons not only mark their own names and the parishes and counties in which the hops were grown on such bags or pockets, but also *in addition thereto*, the name and symbol of other counties, to the great injury of such owners or growers whose description they so use, as well as to the dealers in hops, and of the public; it is enacted,

Growers of hops not to put any name or place of abode than their own on bags or pockets.

By sect. 1. "That from and after the 5th day of July, 1814, every owner, planter, or grower of hops, before he, she, or they shall begin to put any hops into any bag or pocket, shall mark, or cause to be marked, on the outside of each and every such bag, in large, plain, and legible letters, of four inches in length at the least, and half an inch in breadth, and on the outside of every such pocket, in large plain, legible letters of three inches in length and half an inch in breadth at the least, with durable ink or paint, his, her, or their name or names, and the parish and county in which the said hops, to be packed therein, were actually grown; and if any owner, planter, or grower of hops, or any other person or persons shall put any hops into any bag or pocket, without having marked or caused to be marked thereon in manner hereinbefore directed, the several matters and things hereinbefore required and prescribed, or shall before or at any future time after such hops have been packed, or shall * mark or cause to be marked thereon the name of any other person, parish, or county, than as is hereinbefore directed or prescribed, or the symbol appertaining to, or any thing denoting to be the symbol of any other county or place, every such owner, planter, or grower, or other person or persons so offending shall, for every such offence, forfeit and pay the sum of 20*l.* for every such bag or pocket, to be recovered and applied in manner before directed."

* *Sic.*

Penalty.

Hop-planters packing different hops in bag.

Penalty

Sect. 2. "That if any owner, planter, or grower of hops shall knowingly put or suffer to be put any hops of different qualities and value in the same bag or pocket, every such owner, planter, or grower shall forfeit and pay the sum of 20*l.* for every such bag or pocket, to be recovered and applied in manner before directed."

M. penalty on every hundred weight of sophisticated hops.

By the 7 Geo. II. c. 19, s. 2, "That if any person or persons in Great Britain or Ireland shall, from and after the said first day of May, 1734, mix with or put into any quantity of hops any drug or ingredient, or other thing whatsoever, to alter the colour or scent thereof, every person so offending, and being thereof lawfully convicted by the oath of one or more witness or witnesses, before one or more justice or justices of the peace of the county or place where the offence shall be committed, shall for every such offence forfeit and pay the sum of 5*l.* for every hundred-weight thereof" (*a*).

Rebagging foreign hops in British bags, forfeits 10*l.* per cwt. &c.

By the 9 Anne, c. 12, s. 23, "That no person whatsoever shall, during the continuance of this act, take any hops of foreign growth out of the bags in which they are imported, and rebag the same in British bagging, in order to sell, dispose, or export the same as British hops, under the penalty of 10*l.* for every hundred-weight, and after that rate for a greater or lesser quantity; and if any person or persons shall endeavour to defraud Her Majesty of her duties hereby granted, by using twice or oftener the same bag, with the officer's mark thereupon, such person or persons, for every such offence, shall forfeit the sum of 40*l.*"

Brewer not to use

Sect. 24, Reciting that in regard it is found by experience, that hops

(*a*) *R.* v. *Pack*, 6 *T. R.* 374. The defendant was convicted on this fact for putting a quantity of sulphur and brimstone in the fire by which 100 weight of hops were drying, to alter the colour thereof, the vapour and fumes of which ascended to the hops placed over such fire, and, the hops being then in a moist state, fixed to the hops and made them appear brighter. Lord *Kenyon*, C. J., was clearly of opinion that this was an offence within the act of Parliament, even though the vapours were a melioration of the hop (which was not the case, the vapour of the brimstone giving a false colour and a false value to the hops), and the conviction was affirmed.

used in the making of malt drinks are more wholesome for those that drink or consume the same, and of greater advantage to the drink itself, than any other bitter ingredient that can be used instead thereof, enacts, "That during the continuance of this act, no common brewer, innkeeper, or victualler, shall use any broom, wormwood, or other bitter ingredient (to serve instead of hops) in brewing or making any beer or ale to be brewed or made by him, her, or them, for sale, in any part of Great Britain, under the penalty of forfeiting the sum of twenty pounds for every such offence: the infusing of broom or wormwood into beer or ale by the retailer, after the same is brewed and tunned, to make the same broom or wormwood ale, or broom or wormwood beer, always excepted" (*a*).

broom, &c. on pain of 20*l.*

Exception.

By the 26 Geo. III. c. 5, s. 1, "That from and after the 6th day of March, 1786, it shall be lawful for any person or persons to export, from any lawful quays, and in the lawful hours, any such hops to or for Ireland, upon the terms and according to the directions hereinafter mentioned; that is to say, the person or persons intending to export such hops to or for Ireland shall give six hours' notice of the time and place of shipping such hops unto such officer of Excise, of the place where the same shall be shipped, as shall be appointed for that purpose by the commissioners of Excise in England and Scotland respectively, or the major part of them, for the time being, and of the name of the ship or vessel in which the same are intended to be shipped and exported, and of the master or commander thereof, and of the particular port or place in Ireland to which such hops are intended to be exported: and such officer shall take an account of the quantities of such hops so intended to be exported, and of the mark of the weight or tare of each bag, pocket, and cask of such hops, marked on the outside of each such bag, pocket, or cask, and of the planter or planters' name or names, and the place of his or their abode, together with the dates of the year in which such hops were grown, marked in manner aforesaid."

26 Geo. 3, c. 5.

British hops may be exported to Ireland before duties paid, on giving proper notice, &c.

Sect. 2. "Provided always, that if the person or persons so intending to ship such hops shall not begin and proceed to ship the same at the time mentioned in such notice, or within one hour after such time, then such notice shall be void, and such person or persons, so intending to ship such hops, shall be obliged to give a fresh notice to such officer or officers of the time and place when and where such hops are intended to be shipped in order to be exported; and the officer of Excise of the place where the same shall be shipped shall attend and see the same put on shipboard; and the exporter of the said hops shall also, before the shipping the same, give sufficient security, to be approved of by the respective commissioners of Excise, or the major part of them or the person by them appointed for that purpose, in treble the value of the duty intended to be drawn back, that the particular hops so intended to be exported, and every part thereof, shall be shipped and exported, and shall not be unshipped, unladed, or laid on land, or put on board any other ship or vessel in Great Britain (except in case of shipwreck or other unavoidable accident); which security the officer of Excise of the port or place where the said hops shall be exported, appointed for that purpose by the commissioners of Excise in England or Scotland respectively, or the major part of them, for the time being, is hereby directed to take, in his Majesty's name, and to his Majesty's use; and the said exporter shall also, before the shipping of such hops, make oath (or affirmation if a Quaker) that he believes the duties upon such hops had been duly charged (which oath or affirmation the officer appointed for that purpose by the commissioners of Excise in England and Scotland respectively, or the major part of them, for the time being, is hereby authorized and required to administer); and before any debenture or certificate shall be granted for the repayment of the duty on any hops so exported as aforesaid, the exporter shall deliver to

If not exported agreeable to notice, fresh notice to be given.

Security to be given that hops shall not be re-landed, &c.

Exporter to make oath that he believes the duties have been duly charged, &c.

Particulars to be complied with before any debenture shall be granted for a drawback.

(*a*) See now 56 Geo. III. c. 58, s. 2.

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the officer who shall have taken such security as aforesaid, or to the officer who shall be then appointed to take such security as aforesaid, for the exportation of the hops for which a debenture or certificate is claimed, a paper, containing the quantity of hops exported, and for which such security was given as aforesaid, together with the name of the ship or vessel in which such hops were exported, the name of the master or commander thereof, and the particular port or place in Ireland to which such hops have been exported, and containing also the weight or tare of each such bag, pocket, and cask of hops, and the planter or planters' name or names, and the place of his or their abode, together with the dates of the year in which such hops were grown; and the said exporter shall also make oath (or affirmation if a Quaker) before the officer appointed to take security as aforesaid, that he believes the duties upon such hops, mentioned and described in such paper, have been fully paid (which last-mentioned oath or affirmation such officer is hereby authorized and required to administer); and such officer being satisfied of the truth thereof shall, within one month after such last-mentioned oath or affirmation shall have been made, and after the actual exportation of such hops, give to the said exporter, or his clerk or agent, a certificate or debenture, expressing the quantities of such hops so shipped and exported, and the duties which have been paid for the same respectively, and that security hath been given before the shipping the same for the due exportation of the same; and such certificate or debenture being produced to the collector of Excise of the port or place from whence such hops were so exported, he shall forthwith pay or allow the person or persons so exporting the same, or their agents, a drawback or allowance of the duties before paid for such hops so exported, or of such part and so much of the said duties for such respective hops so exported as may now be drawn back or allowed on the exportation of such hops by any law or laws now in force; and if such collector shall not have money in his hands to pay the same, then the respective commissioners of Excise in England or Scotland are required to pay the said drawback or allowance out of such duties as drawbacks or allowances granted upon the exportation of such hops are now payable by law."

Collector to pay the drawback.

Hops relanded after giving security, &c. forfeited.

Sect. 4. "Provided always, that if after the shipping any such hops, and the giving or tendering such security as aforesaid, in order to obtain a drawback or allowance of the duties before paid or charged thereupon, the same hops, or any part thereof, shall be again unshipped, relanded, or laid on land, or put into any other ship or vessel within Great Britain (except in case of shipwreck, or other unavoidable accident), that then, and in every such case, over and above the penalty of the bond which shall be levied and recovered to his Majesty's use, all the said hops which shall be so unshipped, relanded, or laid on land, or be put into any other ship or vessel within Great Britain (except in case of shipwreck, or other unavoidable accident), or the value thereof, shall be forfeited, and may be seized by any officer of the Customs or Excise."

45 Geo. 3, c. 99.

By the 45 Geo. III. c. 99, intituled "*An Act for regulating and encouraging the trade for the improvement of the revenue, and prevention of smuggling to and from the Isle of Man,*" (10th July, 1805).

Allowing a drawback on hops exported

Sect. 12, after reciting that it is expedient to allow a drawback of the duty on British hops on the exportation thereof to the Isle of Man, enacts, "That on the exportation of any British hops to the Isle of Man, there shall be allowed the drawback of the whole duty paid thereon: and that on hops imported into the said Isle of Man from Great Britain there shall be raised, levied, collected, and paid a duty of one penny farthing per pound weight on all hops so imported, and so in proportion for any greater or less quantity (*a*)."

(*a*) As these export duties are now under the management of the Customs, see *ante*, tit. "*Customs;*" and *infra*, 1 & 2 Geo. IV. c. 100.

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1 & 2 Geo 4, c. 100

Drawback of Excise duty on exportation of hops.

By the 1 & 2 Geo. IV. c. 100, s. 1. "That there shall be allowed for every pound weight avoirdupois of hops grown, cured, and made fit for use in Great Britain, and exported, from and after the 12th day of January, 1821, as merchandise to foreign parts, the whole of the Excise duty paid thereon."

Hops to be exported in the original package containing not less than one cwt subject to regulations of 26 Geo. 3, c. 5, &c

Sect. 2. "That all such hops as aforesaid shall be exported as aforesaid in the original package and packages in which the same were charged with duty, each such package containing at the least one hundred weight of such hops, under and subject to the several provisions contained in an act made in the 26th year of the reign of his late Majesty King George the Third, for regulating the exportation of hops to Ireland, and other acts touching or relating to the exportation of any goods subject to a duty or duties of Excise, upon drawback; and that all and singular the rules, regulations, restrictions, provisions, fines, penalties, and forfeitures contained, provided, settled, or established in or by the said act and acts respectively, shall also be used, applied, practised, and put in execution for and in respect of the exportation of hops to foreign parts, so far as such rules, regulations, restrictions, or provisions, fines, penalties, or forfeitures respectively, are or may be applicable or applied thereto, as fully and effectually as if the same were repeated and again enacted in this present act."

Maliciously cutting hop binds felony, and transportation for life or seven years, or imprisonment and whipping.

The 6 Geo. II. c. 37, s. 6, and 4 Geo. IV. c. 46, s. 1, were repealed by 7 & 8 Geo. IV. c. 27; and the 7 & 8 Geo. IV. c. 30, s. 18, enacts, "That if any person unlawfully and maliciously cut any hop-binds growing on poles in any plantation of hops, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond the seas for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, and, if a male, to be once, twice, or thrice publicly or privately whipped (if the court shall so think fit) in addition to such imprisonment."

Penalties, how to be recovered.

The penalties aforesaid (where not otherwise directed) shall be recovered and mitigated as by the laws of Excise directed, and distributed half to the king and half to him that shall sue. 9 Anne, c. 12, s. 26; 24 Geo. II. c. 42, s. 29; 26 Geo. III. c. 5, s. 8; 39 & 40 Geo. III. c. 81, s. 11; 7 & 8 Geo. IV. c. 53.

Printed Calicoes, Linens and Stuffs.

Duties repealed

The duties of Excise and drawbacks on printed calicoes, linens, and stuffs, were entirely repealed, subject to some provisions as to arrears and penalties, by the 1 Will. IV. c. 17; which statute came into operation on the 1st day of March, 1831.

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[12 Anne, st. 1, c. 2; 12 Geo. I. c. 4; 3 Geo. II. c. 7; 33 Geo. II. c. 7; 1 Geo. III. c. 3; 48 Geo. III. c. 74; 1 & 2 Geo. IV. c. 82; 3 Geo. IV. c. 18; 7 & 8 Geo. IV. c. 52; 11 Geo. IV. c. 17; 1 Vict. c. 49; 5 Vict. sess. 2, c. 30.]

No malt to be imported.

It has already been observed (*a*), that by the 3 & 4 Will. IV. c. 52, s. 58, malt is absolutely prohibited from being imported into the United Kingdom.

New duties on licences.

By the 6 Geo. IV. c. 81, every maltster or maker of malt must take out an Excise licence, and pay the respective annual sum, or duty of Excise, in British currency, according to the proportions in the table given in the act, for which, see tit. "*Licences*," *ante*, pp. 642, 644; and upon these amounts an additional duty of £5 per cent. is to be added by the 3 Vict. c. 17.

7 & 8 Geo 4, c. 52. Duties

The 7 & 8 Geo. IV. c. 52, intituled "*An Act to consolidate and amend certain laws relating to the revenue of Excise on malt made in the United Kingdom: and for amending the laws relating to brewers in Ireland, and*

(*a*) *Vide* "*Regulations of the Customs*," *ante*, pp. 511, 512.

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7 & 8 Geo. 4, c. 52.

to the allowance in respect of the malt duty on spirits made in Scotland and Ireland from malt only," (2nd July, 1827), after reciting that it was expedient to assimilate certain of the laws for securing the duties of Excise on malt in Great Britain and Ireland respectively, and to reduce and to collect the same into one act for the United Kingdom, enacted, "That from and after the 10th day of October, 1827, every maltster or maker of malt shall make true and particular entry in writing of his or her name and place of abode, and of every building, place, cistern, couch frame, kiln, and other vessel and utensil, by such maltster or maker of malt intended to be used in or for the making or keeping of malt, or for the keeping of corn or grain to be made into malt, describing in such entry the particular use or purpose for which such building, place, cistern, couch frame, kiln, and other vessel and utensil respectively, is intended to be used, at the next office of Excise; and if any maltster or maker of malt shall use any building, place, cistern, couch frame, kiln, or other vessel or utensil, in or for the making or keeping of malt, or for the keeping of corn or grain to be made into malt, without having made a true and particular entry in writing thereof at the next office of Excise (*a*); or if any maltster or maker of malt shall, without due notice first given at such next office of Excise, use any building, place, cistern, couch frame, kiln, or other vessel or utensil for any other or different purpose in or for the making or keeping of malt, or for the keeping of corn or grain to be made into malt, than the particular use or purpose for which the same shall have been entered; every maltster or maker of malt so offending shall forfeit and lose the sum of £100 for every building, place, cistern, couch frame, kiln, and other vessel or utensil so used, and all the malt and corn or grain which shall be found in any such building, place, cistern, couch frame, kiln, or other vessel or utensil shall be forfeited, and shall and may be seized by any officer of Excise. Provided always, that any entry made of any building, place, cistern, couch frame, kiln, or other vessel or utensil, for any more than one such particular use or purpose as aforesaid, shall be void to all intents and purposes."

From 10th October, 1827, every maltster shall make entry of all places and utensils used for making malt, under penalty of 100*l.* and forfeiture of malt found.

11 Geo. 4, c. 17.

This latter proviso, however, is extended by the 11 Geo. IV. c. 17, intituled, "An act to alter and amend an act of the seventh and eighth years of his present Majesty, for consolidating and amending the laws of Excise on malt made in the United Kingdom, and for amending the laws relating to brewers in Ireland, and the malt allowance on spirits in Scotland and Ireland," (29th May, 1830), which, after reciting the 7 & 8 Geo. IV. c. 52, and that it was expedient to alter and amend the said act, enacted, "That it shall and may be lawful for any maltster or maker of malt, who shall have made or who shall make entry in manner by the said recited act required of any room or place for the keeping of malt therein, or for the keeping of corn or grain to be made into malt, to make use of any such room or place so entered for keeping malt, and to store and keep therein corn or grain to be made into malt, and to make use of such room or place which shall be so entered for keeping corn or grain, and to keep and store therein malt or any other corn, grain, or seeds; any thing in the said act to the contrary notwithstanding. Provided always, that all malt, corn, grain, and seeds be kept separate and apart, so as to prevent the mixing of any such corn, bar-

One room may be used for keeping malt and for keeping grain, if separated by a partition.

(*a*) In allusion to this clause, and sect. 18 of the 7 & 8 Geo. IV. c. 53, Lord Lyndhurst, C. B., in *Attorney General* v. *Dyer*, 2 *Crom. & Mee.* 667, observed, "It is difficult to say what is the making of an entry within the meaning of these acts, because the section of one act requires it to be made at the next office of Excise, whilst the other act requires it to be delivered to the officer." Now, however, the 4 & 5 Will. IV. c. 51, s. 5, enacts, that the entry shall be made by delivering such true and particular account as is required *to the officer of Excise* in whose survey such house, &c. shall be intended to be used, &c. *Vide ante*, tit. "*Entries.*"

ley, or other grain or seeds with malt: Provided also that nothing herein contained shall extend to authorize or allow any distiller or maltster in Scotland or Ireland, who shall have made or who shall make entry as a maker of malt for the sole purpose of being consumed in distilling low wines or spirits from malt only, to keep any corn or grain in any room or place entered for keeping, depositing, or storing malt, or to keep or deposit any malt in any room or place entered for storing corn or grain."

11 Geo. 4, c. 17.

And by sect. 2, which enacts, "That it shall and may be lawful for any maltster or maker of malt (except a maltster or maker of malt in Scotland or Ireland making malt to be consumed in distilling low wines and spirits from malt only), on giving twenty-four hours' notice in writing, if the malthouse and premises of such maltster or maker of malt shall be situated in a city or market-town or the suburbs thereof, and if situated elsewhere forty-eight hours' notice in writing, to the officer of Excise, of his or her intention so to do, to use any kiln entered for making and drying malt, for drying and to dry thereon barley or any corn or grain not making into malt; any thing in the said recited act contained to the contrary notwithstanding."

Raw grain may be dried on the

By the 7 & 8 Geo. IV. c. 52, sect. 2, "That every cistern which shall be used by any maltster or maker of malt for the wetting or steeping of corn or grain to be made into malt, who shall wet or steep more than eight bushels (*a*) of corn or grain to be made into malt at any one time, shall be permanently made and constructed with the sides and ends thereof straight and at right angles to each other, and at no greater depth in any part thereof than forty inches, and having an even bottom, with no more inclination for the drip than half an inch for every foot in length of such drip; and that every such cistern shall be placed in a situation where the officer gauging any corn therein shall have sufficient light, and shall have a clear open space of forty-eight inches at the least above every part of such cistern (*b*); and that every such maltster or maker of malt shall provide for the use of the officers of Excise full and sufficient means to enable such officers easily, safely, and conveniently to have access to and to gauge the corn or grain contained in such cistern, in every part thereof. Provided always, that every vessel, thing, or place used by any maltster or maker of malt to wet or steep corn or grain to be made into malt shall for the purposes of this act be deemed and taken to be a cistern."

7 & 8 Geo. 4, c. 52. Construction of cisterns used by maltsters for steeping above eight bushels at one time.

Sect. 3. "That no cistern shall be used for the wetting or steeping of corn or grain to be made into malt, by any maltster or maker of malt who shall wet or steep more than eight bushels of corn or grain to be made into malt at any one time, which shall not be made or constructed, and placed in such a situation, and have such full and sufficient means provided as by this act before directed and required; and every such maltster or maker of malt, before any corn or grain shall by him or her be wet or steeped in any cistern to be made into malt, shall first obtain a certificate in writing from the supervisor of Excise of the district in which such cistern shall be situated, that he has surveyed and examined such cistern, and that the same is made or constructed, and placed in such a situation, and has such full and sufficient means provided as by this act before directed and required; and if any such maltster or maker of malt shall wet or steep any corn or grain to be made into malt in any cistern, without having first obtained and having such certificate as aforesaid, or in any cistern in which, or in the dimensions or situa-

Maltsters to obtain certificate from supervisors that cisterns are duly constructed.

Steeping corn without such certificate shall be deemed a wetting or steeping without notice.

(*a*) The bushels now in use are not the "Winchester bushel," mentioned as the standard measure in the old act of 12 Anne, st. 1, c. 2, s. 7, for "granting her Majesty duties upon malt;" for the 5 & 6 Will. 4, c. 63, did away with the "Winchester bushel," &c. and made new standard measures in lieu thereof.

(*b*) But see section 6 of the above statute, and the 11 Geo. IV. c. 17, s. 3, *post*, p. 807.

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7 & 8 Geo. 4, c. 52.

tion whereof, or in the means provided as aforesaid, any change has been made after such certificate has been obtained, without notice thereof to such supervisor as aforesaid, and a new certificate obtained for the same in like manner as aforesaid, every such maltster or maker of malt so offending (and notwithstanding any entry by him or her made of such cistern) shall be deemed to have wet and steeped such corn or grain to be made into malt without notice, and shall be liable to be sued for and to pay for every such offence as aforesaid the penalty by this act imposed for wetting or steeping corn or grain to be made into malt without notice."

Maltsters not keeping requisite means for the use of officers, or not assisting them to gauge cisterns, to forfeit 100*l.*

Sect. 4. "That if any such maltster or maker of malt, having obtained such certificate from the supervisor as by this act before directed, shall not maintain and at all times place and keep the means by him or her provided, as by this act before directed and required, and for which such certificate shall have been obtained, or shall not aid and assist to the utmost of his or her power, and with his or her servants, any officer of Excise in using such means, so that such officer may be thereby enabled easily, securely, and conveniently to gauge the whole of the corn or grain contained in any cistern by him or her used for the wetting or steeping of such corn or grain to be made into malt, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of one hundred pounds."

Couch frames to be constructed as specified, under penalty of 100*l.* and forfeiture of malt found therein.

Sect. 5. "That every couch frame which shall be used by any such maltster or maker of malt shall be made or constructed with the sides and bottoms thereof straight and at right angles to each other, and having three of such sides permanently made or constructed, and the other side thereof formed by moveable boards or planks of the substance of two inches at the least in thickness, such couch frame to be supported on the outside in every part thereof, so that the same and every part thereof may be of sufficient strength not to bend or curve, or fail to preserve, when filled with corn or grain, the same dimensions which such couch frame shall have had when empty, and so that the officer of Excise may be enabled easily and conveniently to gauge in every part of such couch frame the corn or grain contained therein; and if any such maltster or maker of malt shall use any couch frame in or for the making of malt, which shall not be made or constructed as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of one hundred pounds, and all corn or grain which shall be found in any couch frame so made or constructed as aforesaid shall be forfeited, and shall and may be seized by any officer of Excise."

No penalty for using cisterns and couch frames in use before passing of this act, if same remain unaltered.

Sect. 6. "Provided always, that no such maltster or maker of malt who shall use any cistern for the wetting or steeping of corn or grain to be made into malt, or any couch frame in or for the making of malt, which shall have been so used and constructed at and immediately before the passing of this act, shall, so long as the same shall remain unaltered, and of the same form and dimensions as the same respectively were at and immediately before the passing of this act, be subject or liable to any penalty or forfeiture by this act imposed, for or by reason of such cistern or couch frame not being made or constructed in the form and dimensions by this act in that behalf directed and required, or for or by reason of such maltster laying any corn or grain in any such cistern of any greater depth in any part thereof than forty inches, or for or by reason of such maltster laying any corn or grain in any such couch frame of any greater depth in any part thereof than thirty inches, if such couch frame, as the same shall have been used and constructed at and immediately before the passing of this act, shall not be of sufficient size to contain the corn or grain emptied from the cistern, without the same being laid therein a greater depth than thirty inches, and such couch frame cannot, without enlarging such malthouse, or other cause shown to the satisfaction of the commissioners of Excise in Eng-

land, or the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland, be made of such sufficient size as aforesaid, (such cause and satisfaction being stated in the certificate of the supervisor hereinbefore mentioned); subject nevertheless, in all other respects, to the several rules, regulations, and provisions by this act imposed."

7 & 8 Geo 4, c. 52.

But, by the 11 Geo. IV. c. 17, s. 3, it is enacted, "That it shall be lawful for any maltster or maker of malt, with the approbation of the commissioners of Excise, and under such regulations as the said commissioners shall order and direct, to make use of any cistern which shall have been made and constructed and in use before the passing of the said recited act, notwithstanding such cistern shall not have a clear open space of forty-eight inches at the least above every part of such cistern, so that there be sufficient head-room and light and means to enable the officers of Excise safely and conveniently to have access to and to gauge the corn and grain contained in every part of such cistern; and the certificate in and by the said act required shall, with such approbation as aforesaid, be granted for the use of such cistern, and for any maltster or maker of malt, under such approbation and regulations as aforesaid, to make use of any couch frame made and constructed before the passing of the said recited act, notwithstanding such couch frame shall not have three sides thereof permanently made or constructed, provided that the moveable sides of such couch shall be made with boards or planks of the substance of two inches in thickness at the least and supported on the outside in every part thereof, so that the frame retain the same dimensions in every part when filled with grain as when empty."

Cistern and couch frames may be used, although not constructed in manner directed by the act

The 7 & 8 Geo. IV. c. 52, enacts, by sect. 7, "That it shall be lawful for any officer of Excise, and any person or persons in his aid or assistance, at any time, either by night or day, to enter into and remain so long as such officer may think fit, for the purposes hereinafter mentioned, in any building or place belonging to or used by any maltster or maker of malt for the making or keeping of malt, or for the keeping of corn or grain to be made or making into malt, and to gauge all vessels and utensils therein used by any such maltster or maker of malt for the wetting or steeping of corn or grain to be made into malt, and to examine, gauge, or measure, and take account of all corn or grain in any such building or place, whether such corn or grain shall be in a state of operation for the making of malt or otherwise, and also of all malt that shall be in any such building or place; and it shall be lawful for such officer, and he is hereby authorized and required, to charge the duty imposed by any act or acts relating to the revenue of Excise on malt upon all malt made, or corn or grain making into malt, by such maltster or maker of malt, found therein, and of such account and charge of duty to make a return or report in writing to the commissioners of Excise, or to the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland, or to such person as the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, may direct; such officer, in all cases where the minutes of the entries made by him in taking such account shall not appear on the book or paper called the specimen left at the entered premises of such maltster or maker of malt, giving (if demand be made thereof in writing at the time of taking such account) a true copy of such charge, in writing under his hand, to such maltster or maker of malt; and any such return or report of such officer as aforesaid shall be and shall be taken to be a charge of such duty upon the maltster or maker of malt."

Officers may enter buildings used by maltsters, gauge vessels, &c. and take account, &c.

By the 11 Geo. IV. c. 17, s. 4, "That every officer of the Excise who shall take an account of and charge the duty of Excise on any corn or grain making into malt at the malthouse or premises of any maltster or maker of malt, and make a return thereof to the commissioners of

Officer of Excise to give a copy of his charge, if demanded at any time by the maltster.

(9). *Malt.*

11 Geo. 4, c. 17.

Excise, under the powers and directions of the said recited act, shall in all cases when the minutes of the entries made by him in taking such account shall not appear on the book or paper called the specimen paper, left at the premises of the maltster or maker of malt, give a true copy of such charge in writing under his hand to the maltster whose corn or grain making into malt shall be so charged, if such copy shall be demanded in writing by or on behalf of such maltster or maker of malt, notwithstanding such demand may not be made at the time of taking such account."

Specimen to be kept by officers on premises of maltsters, and not to be removed or destroyed, or entries obliterated.

By the 7 & 8 Geo. IV. c. 52, s. 8, "That the supervisor or surveyor of Excise in whose district or division any maltster or maker of malt shall be, or the officer of Excise under whose survey such maltster or maker of malt shall be, may leave and deposit in some conspicuous and open part of some building or place entered by such maltster or maker of malt a certain book or paper called a specimen, for recording therein minutes of the entries made by the officers respectively who survey the premises of such maltster or maker of malt in the books of such officers, of the state of the manufactory, and of the accounts and particulars of the survey thereof at any time taken by such officers respectively, and the names and minutes of survey and observations of any other officer who may visit or inspect such entered premises; and every officer of Excise shall at all times have free access to such book or paper, with liberty and power to remove or take away the same, leaving a new book or paper, for the like purpose as aforesaid, in lieu thereof; and if any maltster or maker of malt, or other person, not being an officer of Excise shall remove or take away or shall conceal or withhold any such book or paper, or shall damage or destroy the same, or alter, deface, or obliterate any entry therein, or shall make any entry therein, every such maltster or maker of malt, or other person, so offending, shall for every such offence forfeit and lose the sum of 200*l.*"

Officer to enter on the specimen the number of bushels charged on each steeping.

And by the 1 Vict. c. 49, s. 11, it is enacted, "That every officer of Excise surveying any maltster or maker of malt shall in respect of every wetting or steeping of corn or grain to be made into malt, at his next visit after the quantity of corn or grain so wetted or steeped shall have been dried off into malt and removed from the kiln, enter on the specimen the number of bushels of malt with which the maltster or maker of malt shall be chargeable on such wetting or steeping, according to the best gauge at any time had on such corn or grain, shewing in such entry whether such charge has arisen from the cistern or couch or the floor or kiln (*a*)."

Penalty on obstructing officers of Excise, or persons acting in their aid.

By the 7 & 8 Geo. IV. c. 52, s. 9, "That if any maltster or maker of malt, or other person, shall resist, oppose, molest, obstruct, or hinder any officer of Excise, or any person employed in the revenue of Excise, or acting in the aid and assistance of any officer or person so employed, in the due execution of his office or duty, or in the execution of any of the powers or authorities by this act given or granted to such officer or person so employed, every maltster or maker of malt, or other person,

(*a*) Proof of *malt* not having required so long a space of time in working, and passing through the floors from the cistern to the kiln, as it had been entered as having taken for that purpose, will, in some cases, be considered *primâ facie* evidence of fraud; and duties are recoverable for the amount of so much grain malted as would be commensurate with such excess of time, as if so much of the duty were in arrear.

The average number of days necessary for working the grain intended for malt between the steeping and drying is computed by the Excise at *sixteen.* Excise books transcribed from the maltster's *specimen* paper are admissible evidence against him, without calling the officers to substantiate them; and that although they should be charged to be fraudulent and collusive, without proof of their being so. If the jury find a verdict for a sum certain, according to a calculation which does not warrant the amount, it is a ground for a new trial. (*Rex* v. *Grimwood,* 1 *Price,* 369).

so offending, shall for every such offence forfeit and lose the sum of 300*l.*" (9). *Malt.*

Sections from 10 to 19, each inclusive, respecting "barley books," are repealed by the 11 Geo. IV. c. 17, which enacts, by

Regulations relating to keeping a barley book, and making entries therein, repealed.

Sect 5, "That so much of the said recited act as directs, that there shall be delivered by the proper officer of Excise to every maltster or maker of malt a book prepared for such purposes as thereinafter mentioned, called a barley book, to be kept in some public and open part of his or her entered premises, for the inspection of the officers of Excise, together with so much and all such parts of the said recited act, and all clauses, provisions, regulations, and enactments in the said act contained, which direct or require entries of barley received, wetted, or sent out by any maltster or maker of malt, or any other entries, to be made in such book, or which direct or require any maltster or maker of malt to deliver to the officer or officers of Excise any account or accounts of his or her stock of barley, or to level or place the barley in the custody or possession of any maltster or maker of malt in such form as may enable the officers of Excise to gauge and ascertain the quantity thereof, and which direct, authorize, or require any officer of Excise to take an account of the barley in the stock, custody, or possession of any maltster or maker of malt, and all penalties and forfeitures in and by the said act imposed, for any breach or neglect of any of the said clauses, provisions, regulations, or enactments, or for any excess or deficiency in any quantity of barley in the stock, custody, or possession of any maltster or maker of malt, shall be and the same is and are hereby repealed."

Sect. 20 of the 7 & 8 Geo. IV. c. 52, as to provisions for notice of wetting corn or grain, is repealed by the 11 Geo. IV. c. 17, s. 6, which enacts,

Twenty-four hours' notice to be given of wetting corn at a malthouse, situated in a city or market town, and forty-eight hours' notice elsewhere (a).

By sect. 7, "Every maltster or maker of malt, before beginning to wet or steep any corn or grain to be made into malt, shall give to the officer of Excise under whose survey such maltster or maker of malt shall then be twenty-four hours' notice at least in writing, if the malthouse of such maltster or maker of malt shall be situated in any city, or any market town, or in the suburbs thereof, and if such malthouse shall not be so situated, forty-eight hours' notice at least in writing of the day and particular hour of the day when such maltster or maker of malt intends to wet or steep corn or grain to be made into malt; and if any maltster or maker of malt shall begin to wet or steep any corn or grain to be made into malt without giving such notice as aforesaid, or shall wet or steep any corn or grain to be made into malt before the particular hour specified in such notice, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*; and in case any maltster or maker of malt shall not, pursuant to any such notice as aforesaid, begin to wet or steep the corn or grain mentioned in such notice, and cover the whole thereof with water, at the day and hour mentioned in such notice, or before the expiration of three hours from the hour mentioned in such notice, every such notice shall be and is hereby declared to be null and void."

Hours of wetting of corn.

By the 7 & 8 Geo. IV. c. 52, s. 21, "That it shall not be lawful for any maltster or maker of malt to begin to wet or steep any corn or grain to be made into malt at any other time than between the hours of eight of the clock in the morning and two of the clock in the afternoon; and if any maltster or maker of malt shall begin to wet or steep any corn or grain to be made into malt at any other time than as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*" Penalty, 100*l.*

(a) In all cases within 7 & 8 Geo. IV. c. 52, and 11 Geo. IV. c. 17, in which a notice is required from a maltster to an officer of Excise, the time for giving it shall be the same as when the malthouse is situate in a city or market town. 1 Vict. c. 49, s. 2.

(9). *Malt.*

Sect. 22 of the same act, as to provision that maltsters giving notice to steep for sixty-five hours, shall begin to wet between eight in the evening and eleven at night, is repealed by the 11 Geo. IV. c. 17, s. 9, which enacts,

11 Geo. 4, c. 17. Provision that maltsters, having given notice to steep for sixty-five hours, shall empty their cistern only between one in the forenoon and four in the afternoon, repealed

By sect. 15, "That so much of the said recited act as enacts, that it shall not be lawful for any maltster or maker of malt, who shall have given such further notice of his or her intention to continue the corn or grain by him or her wet or steeped covered with water for the space of sixty-five hours, as before mentioned, to empty or take such corn or grain, or any part thereof, from or out of the cistern at any other time than between the hours of one of the clock in the forenoon and four of the clock in the afternoon; and if any maltster or maker of malt, who shall have given such further notice as aforesaid, shall empty or take such corn or grain as aforesaid, or any part thereof, from or out of the cistern at any other time than aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*, shall be and the same is hereby repealed."

Sections 23 and 24 of the 7 & 8 Geo. IV. c. 52, are repealed by the 11 Geo. IV. c. 17, which enacts, by

Provision that corn shall be kept in the cistern not exceeding fifty-five nor less than forty hours, repealed.

Sect. 10, "That so much of the said recited act as enacts, that every maltster or maker of malt shall continue the corn or grain by him or her wet or steeped in the cistern to be made into malt covered with water for a space of time not exceeding fifty-five and not less than forty hours from the time of such corn or grain being first wet or steeped, and if any maltster or maker of malt shall continue such corn or grain, or any part thereof, covered with water for any space of time exceeding fifty-five hours, or shall drain or draw off the water from any such corn or grain before the expiration of forty hours from the time of such corn or grain being first wet or steeped, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*, shall be and the same is hereby repealed."

Provision that maltsters, having given notice to steep for sixty five hours, shall keep grain in steep for that time, repealed.

By sect. 11, "That so much of the said recited act as enacts, that where any maltster or maker of malt shall intend to continue the corn or grain to be wet or steeped covered with water for the space of sixty-five hours, every such maltster or maker of malt shall, in the notice in writing by him or her required to be given to the officer of Excise under whose survey such maltster or maker of malt shall then be, of the day and particular hour of the day when such maltster or maker of malt shall intend to wet or steep corn or grain to be made into malt, and of the quantity of corn or grain in bushels to be then wet or steeped, give further notice that it is his or her intention to continue the same covered with water for the space of sixty-five hours from the time of such corn or grain being first wet or steeped; and every such maltster or maker of malt shall in such case continue such corn or grain covered with water for and until the expiration of sixty-five hours as aforesaid; and if any maltster or maker of malt, who shall have given such further notice as aforesaid, shall not continue such corn or grain covered with water for and until the expiration of sixty-five hours as aforesaid, or shall continue the same covered with water for any time after the expiration of sixty-five hours as aforesaid, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*, shall be and the same is hereby repealed."

Maltster to keep the grain in the cistern covered with water for at least forty hours.

And by sect. 13, "That every maltster or maker of malt shall continue the corn or grain by him or her wet or steeped in the cistern, to be made into malt, covered with water for a space of time not less than forty hours from the time of such corn or grain being first wet or steeped; and if any maltster or maker of malt shall drain or draw off the water from any such corn or grain before the expiration of forty hours from the time of such corn or grain being first wet or steeped, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*"

Sect. 25 of the 7 & 8 Geo. IV. c. 52, is repealed by the 11 Geo. IV. c. 17, which enacts, by

(9). *Malt.*

7 & 8 Geo. 4, c. 52.

So much of act as allows water to be once drained, repealed.

Sect. 12, "That so much of the said recited act as provides and enacts, that it shall be lawful for any maltster or maker of malt, between the 1st day of March and the 1st day of November in every year, to drain or draw off the water once from any corn or grain by him or her wet or steeped in the cistern to be made into malt, before the expiration of the time for which corn or grain is by this act required to be kept covered with water, without incurring any penalty for so doing, provided such maltster or maker of malt shall, in the notice by him or her given of his or her intention to wet or steep such corn or grain to be made into malt by this act before required, express his or her intention to drain or draw off the water from such corn or grain as aforesaid, and the particular day and hour of the day, between the hours of eight of the clock in the morning and two of the clock in the afternoon, when such maltster or maker of malt shall intend so to do, provided always that such corn or grain be again completely covered with water before the expiration of one hour from the time of the water being begun to be drained or drawn off as aforesaid, any thing hereinbefore contained to the contrary thereof notwithstanding, shall be and the same is hereby repealed."

Water may be once drained during the steeping, on due notice having been given, provided the corn be again covered within ar hour.

And by sect. 14, "Provided always, that it shall be lawful for any maltster or maker of malt to draw off the water from any corn or grain by him or her wet or steeped in the cistern, to be made into malt, once during the time such corn or grain shall be continued in steep, although the same shall not then have been covered with water for the space of forty hours, without any penalty being incurred for so doing, provided such maltster or maker of malt shall, in the notice by him or her given of his or her intention to wet or steep corn or grain to be made into malt, by this act required, express his or her intention to drain or draw off the water from such corn or grain as aforesaid, and the particular day and hour of the day, between the hours of eight of the clock in the morning and two of the clock in the afternoon, when such maltster or maker of malt shall intend so to do; provided always, that such corn or grain be again completely covered with water before the expiration of one hour from the time of the water being begun to be drained or drawn off as aforesaid; any thing in the said recited act or this act to the contrary notwithstanding."

7 & 8 Geo. 4, c. 52.

No corn to be added to that in steep after the account has been taken, under penalty of 200*l.*

By the 7 & 8 Geo. IV. c. 52, s. 26, "That if any maltster or maker of malt shall add any corn or grain to the corn or grain wet or steeped in any cistern to be made into malt after the officer of Excise shall have taken an account thereof, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l.*"

Corn to be emptied only between seven in the morning and four in the afternoon, under penalty of 100*l.*

Sect. 27. "That it shall not be lawful for any maltster or maker of malt to empty or take any corn or grain from or out of the cistern at any other time than between the hours of seven of the clock in the morning and four of the clock in the afternoon; and if any maltster or maker of malt shall empty or take any corn or grain from or out of the cistern at any other time than aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*" (*a*)

Sect. 28 is repealed by the 11 Geo. IV. c. 17, s. 15, *ante*, p. 810.

All cisterns in the same house to be emptied at the same time, or within three hours from the time of beginning to empty any one of them, on penalty of 200*l.*

Sect. 29. "That if any maltster or maker of malt shall, in any building or place, or in any buildings or places, having the same roof or any internal communication between them, use more than one cistern at the same time for wetting or steeping any corn or grain to be made into malt, every such maltster or maker of malt shall empty or take all the corn or grain from and out of all such cisterns at one and the same time; and if any such maltster or maker of malt shall empty or take

(*a*) See section 46, *post*, p. 816, as to when servants empty it at other times.

(9). *Malt.*

7 & 8 Geo. 4, c. 52.

any corn or grain from or out of any such cisterns at different times, every such maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l.*: Provided always, that nothing hereinbefore contained shall be deemed or construed to extend to subject any maltster or maker of malt to the said last-mentioned penalty for or by reason of his or her emptying or taking corn or grain from or out of any two or more cisterns at different times of the same day, if the emptying or taking of the corn or grain from or out of the last of such cisterns shall be finished within three hours from the time of the beginning to empty or take the corn or grain from or out of the first of such cisterns."

Penalty on taking corn out of any cistern within ninety six hours of the last emptying of any cistern under the same roof, 200*l.*

Sect. 30. "That it shall not be lawful for any maltster or maker of malt to empty or take any corn or grain from or out of any cistern in any building or place, or in any buildings or places, having the same roof or any internal communication between them, until the expiration of ninety-six hours from the time of the last preceding emptying or taking of corn or grain from or out of any cistern therein; and if any maltster or maker of malt shall empty or take any corn or grain from or out of any such cistern until the expiration of such time as last aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l.*: Provided always, that such maltster or maker of malt shall not be liable to any such penalty as last aforesaid for or by reason of his or her emptying or taking any corn or grain from or out of any such cistern as aforesaid before the expiration of such ninety-six hours, if such corn or grain be so emptied or taken out on the day on which such ninety-six hours shall expire, and not before seven of the clock of the morning of such day."

Proviso.

Penalty on so conveying corn from cistern that it cannot be gauged in couch frame, 200*l.*

Sect. 31. "That if any maltster or maker of malt shall take or convey away from the cistern any corn or grain making into malt, so that no gauge thereof can be taken by the officer of Excise in the couch frame, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l.*"

Maltsters to empty all grain from the cisterns into the couch frames.

Sect. 32. "That every maltster or maker of malt who shall empty or take any corn or grain from or out of the cistern shall empty all such corn or grain into a couch frame or frames entered by such maltster or maker of malt; and that it shall be lawful for any maltster or maker of malt who shall use more than one cistern at the same time, for the wetting or steeping of corn or grain to be made into malt, in any building or place, or in any buildings or places, having the same roof or any internal communication between them, to empty the corn or grain from or out of any two or more of such cisterns into one and the same entered couch frame, to be taken an account of by the officer therein and thenceforth as one and the same wetting or steeping; and all corn or grain emptied into such couch frame or frames as aforesaid shall be laid flat and level therein by the maltster or maker of malt, and at no greater depth, except as in that behalf is in this act before excepted, in any such couch frame or frames than thirty inches in any part thereof; and when any corn or grain shall be so emptied between the first day of March and the first day of December in any year, such corn or grain shall be kept and continued so laid in the couch frame or frames into which such corn or grain shall have been emptied for the space of twenty-six hours from the time of being emptied or taken from or out of the cistern or cisterns; and when any corn or grain shall be so emptied at any other time of the year than as aforesaid, such corn or grain shall be kept and continued so laid in the couch frame or frames into which such corn or grain shall have been emptied for the space of thirty hours from the time of its being so emptied or taken from or out of the cistern or cisterns; and all corn or grain making into malt during such respective periods of time as aforesaid shall be deemed and taken to be in couch; and if any maltster or maker of malt, who shall empty or take any corn or grain from or out of any cistern or cisterns, shall not empty

Grain to be levelled therein, and not to be of greater depth than thirty inches.

Time that such grain shall lie in the couch frames.

all such corn or grain into such couch frame or frames entered by such maltster or maker of malt, or shall not lay the same flat and level in such couch frame or frames as aforesaid, or shall lay the same therein to any greater depth than thirty inches in any part thereof, or shall not keep or continue all corn or grain in the couch frame or frames into which the same shall have been emptied for such period of time respectively as aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*"

7 & 8 Geo. 4, c. 52.

Penalty, 100*l.*

But by the 11 Geo. IV. c. 17, it is enacted by sect. 16, "That no maltster or maker of malt shall be liable to any penalty or forfeiture by the said recited act imposed, for or by reason of any corn or grain not being at any time of the year kept and continued laid in the couch frame or frames into which such corn or grain shall have been emptied for the space of thirty hours or any longer period than twenty-six hours from the time of its being emptied from or out of the cistern or cisterns in which the same shall have been wetted or steeped, but all such corn or grain shall nevertheless in all cases where the same shall not have been gauged and taken account of by the proper officer of Excise within twenty-six hours from the time of such corn or grain being emptied out of the cistern or cisterns, and whilst the same was kept in the couch frame, at all times of the year, be taken and deemed to be in couch, and shall be gauged and taken account of by the officer of Excise as in couch for the space of thirty hours from the time of its being emptied from or out of the cistern or cisterns, whether such corn or grain shall be continued in the couch frame or frames into which the same shall have been emptied, or shall be removed after the expiration of the said twenty-six hours, and before the expiration of thirty hours, from such couch frame or frames, to the floor."

Corn may be emptied from the couch frame at the expiration of twenty-six hours, but to be deemed in couch for thirty hours.

By the 7 & 8 Geo. IV. c. 52, sect. 33, "That if any maltster or maker of malt shall tread or force together any corn or grain making into malt in the cistern or couch frame, or if any corn or grain making into malt shall be found in any cistern or couch frame so hard, close, and compact as it could not have been unless the same had by some means or other been trodden or forced together therein, every maltster or maker of malt who shall tread or force together such corn or grain as aforesaid, or in whose cistern or couch frame such corn or grain shall be found so hard, close, and compact as aforesaid, shall for every such offence forfeit and lose the sum of 100*l.*"

7 & 8 Geo. 4, c. 52.

Penalty on treading or forcing together corn in the cistern or couch frame.

Sect. 34. Empowering officers to turn over and lay level again corn or grain which they may suspect to have been forced together in the cistern or couch frame, &c., is repealed by the 1 Vict. c. 49, s. 3, which enacts, by

Sect. 5, "That when any officer of Excise shall suspect that the corn or grain making into malt in any cistern or couch frame has been trodden or forced together, or that the corn or grain so making into malt therein is so hard, close, and compact, as it could not have been unless the same had been by some means or other trodden or forced together in such cistern or couch frame, it shall be lawful for such officer to direct the maltster or maker of malt, or his workmen and servants, to throw all such corn or grain from and out of the cistern or couch frame, and for such officer, and any person or persons in his aid or assistance, which aid and assistance the maltster or his workmen and servants shall also give if required, to return all such corn or grain into the cistern or couch from which the same shall have been thrown, and to lay the whole of such corn or grain level again in such cistern or couch; and if any increase shall be found in the gauge or quantity of such corn or grain, after being returned into and laid level again in the cistern or couch frame, over and above the former gauge taken before the same was thrown out, in any greater proportions than those of five bushels in every one hundred bushels previously to such corn or grain having been

1 Vict. c. 49.

Officers of Excise suspecting any cistern or couch to be trodden or forced together, may have the same turned out and returned

What increase to be deemed conclusive evidence of treading or forcing together.

(9). *Malt.*

1 Vict. c. 49.

emptied eight hours from the cistern, or six bushels in every one hundred bushels if such corn or grain shall have been emptied from the cistern eight hours, and not emptied sixteen hours, or seven bushels in every one hundred bushels if such corn or grain shall have been emptied from the cistern sixteen hours or upwards, the increase so respectively found as aforesaid shall be deemed conclusive evidence of such corn or grain having been trodden or forced together, and the court or justices before whom such evidence shall be given shall thereupon convict the maltster or maker of malt in the penalty imposed by the said recited act of the seventh and eighth years of his said Majesty's reign; and every maltster or maker of malt who, or whose servants or workmen shall, when directed by any officer of Excise, refuse to throw out any corn or grain making into malt from any cistern or couch, or to aid or assist, if required so to do, in returning the same into the cistern or couch from which the same shall have been thrown, shall forfeit 100*l.*: Provided always, that it shall be lawful to prove by any other or different evidence that such corn or grain had been trodden or forced together."

Penalty on sprinkling or wetting corn before it has been twelve days out of the cistern.

By the 7 & 8 Geo. IV. c. 52, sect. 35, "That if any maltster or maker of malt shall wet, water, or sprinkle any corn or grain making into malt, before the expiration of twelve days, or two hundred and eighty-eight hours, after the same shall have been emptied or taken from or out of the cistern, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l.*"

Maltsters may sprinkle grain wetted fifty hours, under certain regulations.

But by the 1 Vict. c. 49, s. 7, "That it shall be lawful for any maltster or maker of malt who shall have kept and continued any corn or grain making into malt covered with water in the cistern for the full space of fifty hours from the time of such corn or grain being first wetted or steeped, and who shall not at the same time have in the same malthouse any other corn or grain in the couch or on the floor which shall have been kept covered with water in the cistern for any less space than fifty hours from the time of the same having been first wetted or steeped, to wet, water, or sprinkle any such corn or grain at the expiration of six days, or one hundred and forty-four hours after the same shall have been emptied or taken out of the cistern, on giving notice to the officer of excise of his intention to wet, water, or sprinkle such corn or grain twenty-four hours before wetting, watering, or sprinkling the same: provided always, that every maltster or maker of malt who shall wet, water, or sprinkle any corn or grain making into malt before the expiration of twelve days, or two hundred and eighty-eight hours, except under the regulations and on giving such notice as aforesaid, shall be subject and liable to the penalty imposed by the said recited act of the seventh and eighth years of the reign of his said Majesty for such offence."

No maltster to have more than five floors, including the couch frame and kiln, from one cistern, or one or more cisterns emptied into the same couch frame, under penalty of 200*l.*

By the 7 & 8 Geo. IV. c. 52, sect. 36, "That it shall not be lawful for any maltster or maker of malt at one and the same time to have more than five floors or quantities of corn or grain making into malt, in the couch frame, or on the floor or kiln, or all or any of them, wetted or steeped in and arising from, or pretended to have been wetted or steeped in and to have arisen from, or denoted by its place of deposit in the malthouse to have been wetted or steeped in and to have arisen from one and the same cistern, or one or more cisterns emptied into one and the same couch frame; and if any maltster or maker of malt shall at one and the same time have more than five floors or quantities of corn or grain making into malt as aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l.* Provided always, that nothing hereinbefore contained shall extend, or be deemed or construed to extend, to subject any maltster or maker of malt to the said last-mentioned penalty for or by reason of his or her separating or dividing any one or more of his or her floors or quantities of corn or grain making into malt, either into two or more pieces, for the

Floors may be divided for working separately, or the oldest one for carrying to the kiln.

7 & 8 Geo. 4, c 52.

purpose of working such pieces separately and apart from each other, in the same malthouse in which such floors or quantities of corn or grain making into malt respectively shall have been wet or steeped, or for or by reason of any such maltster or maker of malt separating or dividing the oldest of his or her floors or quantities of corn or grain making into malt, for the sole purpose of removing the same to the kiln to be immediately dried thereon."

Maltster may have six floors, including the couch and kiln, in operation at the same time.

The 1 Vict. c. 49, s. 10, reciting, that by the said recited act of the seventh and eighth years of the reign of his said Majesty no maltster or maker of malt is allowed at one and the same time to have more than five floors or quantities of corn or grain making into malt in the couch frame or on the floor or kiln, or all or any of them, wetted or steeped in and to have arisen from, or pretended to have been wetted or steeped in and to have arisen from, or denoted by its place of deposit in the malthouse to have been wetted or steeped in and to have arisen from, one and the same cistern, or one or more cisterns emptied into one and the same couch frame, under a penalty of two hundred pounds, enacts, "That no maltster or maker of malt shall incur or be subject to the said penalty for or by reason of his having at the same time six floors or quantities of corn or grain making into malt in the couch frame or on the floor or kiln, or all or any of them, wetted or steeped in and arising from one and the same cistern, or from one or more cisterns emptied into one and the same couch frame."

Floors to be in regular forms, and levelled and laid in succession, according to seniority of age under penalty of 100*l.*

By the 7 & 8 Geo. IV. c. 52, s. 37, "That every maltster or maker of malt shall deposit and leave all such floors or quantities of corn or grain making into malt, so that the sides or outward edges thereof shall be in straight lines, and shall level and lay the same in regular succession one before the other, according to the seniority in age of such floors or quantities of corn or grain making into malt upon the floor or floors of the malthouse of such maltster or maker of malt; and if any maltster or maker of malt shall not deposit and leave any such floor or quantity of corn or grain making into malt so as aforesaid, or if the maltster or maker of malt, or any of his servants, being present at the survey thereof by any officer, shall not, on the request of such officer, forthwith put the sides or outward edges of any floor or quantity of corn or grain making into malt in straight lines, or shall not level or lay the same as aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*"

No penalty for the outward edges of the floor not being in straight lines, if so placed as to be conveniently gauged.

By the 11 Geo. IV. c. 17, s. 19, "That nothing in the said act contained shall extend or be construed to extend to render liable any maltster or maker of malt to any penalty by the said act imposed for not putting or placing the sides or outward edges of any floor, or any quantity of corn or grain making into malt, in straight lines, as required by the said recited act, so that all such floors or quantities of corn or grain making into malt shall be deposited and left and placed in such form that they may be conveniently gauged, and that they be levelled as required by the said recited act."

Penalty on mixing corn of different steepings (*a*).

By the 7 & 8 Geo. IV. c. 52, s. 38, "That if any maltster or maker of malt shall mix, either on the floor or on the kiln, any corn or grain of one wetting or steeping, with or amongst any corn or grain of another or different wetting or steeping, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 200*l.*"

Penalty on wetting or damping malt after taken from the kiln.

Sect. 39. "That if any maltster or maker of malt shall wet, water, sprinkle, or damp any malt after the same shall have been taken or thrown off the kiln, and before such malt shall be delivered into the custody or possession of the brewer or other person who shall have purchased the same, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*"

(*a*) As to mixing raw grain with malt, see 1 Geo. I. st. 2, c. 2, s. 13.

(9). *Malt.*

7 & 8 Geo. 4, c. 52.

Penalty on fraudulently depositing, concealing, or conveying away mal

Sect. 40. "That if any maltster or maker of malt, or other person, shall fraudulently deposit, conceal, or convey away from the sight of the officers of Excise any malt, or corn or grain making into malt, every maltster or maker of malt, or other person, so offending, shall for every such offence forfeit and lose the sum of 200*l.*; and all such malt, or corn or grain making into malt, so fraudulently deposited, concealed, or conveyed away as aforesaid, shall be forfeited, and shall and may be seized by any officer of Excise" (*a*).

Penalty for removing or receiving malt before account taken and duties charged.

Sect. 41. "That if any maltster or maker of malt shall remove, carry, or send away any malt from the building or place where the same shall have been made, before such malt shall have been taken an account of and charged with duty by the proper officer of Excise, or if any person shall receive or have in his or her custody or possession any malt so removed, carried, or sent away as aforesaid, knowing the same to have been so removed, carried, or sent away, every maltster or maker of malt, or person, so offending shall for every such offence forfeit and lose the sum of 200*l.*; and all the malt so removed, carried, or sent away as aforesaid shall be forfeited, and shall and may be seized by any officer of Excise."

11 Geo. 4, c. 17.

Sect. 42 is repealed by the 11 Geo. IV. c. 17, which enacts by sect. 20, "That so much of the said recited act, which enacts, that whenever the duty upon malt shall be charged by gauge of the corn or grain taken while the same was in a state of operation, or in process of making into malt, certain allowances should be made upon such gauges as were thereinafter mentioned" (*b*).

Sect. 43 of the 7 & 8 Geo. IV. c. 52, as to an allowance on unscreened malt measured from the kiln, is repealed by the 11 Geo. IV. c. 17, s. 22.

Sect. 44 of the 7 & 8 Geo. IV. c. 52, requiring a monthly entry to be made by every maltster of all the malt made by him, &c., is repealed by the 11 Geo. IV. c. 17, s. 23.

Sect. 45 of the 7 & 8 Geo. IV. c. 52, requiring maltsters to clear off their duties within fourteen days after entry, is repealed by the 11 Geo. IV. c. 17, s. 24.

Punishment of servants maliciously beginning to wet corn, or emptying the cistern at illegal hours, &c.

By the 7 & 8 Geo. IV. c. 52, s. 46, "That if any workman, servant, or labourer employed by or in the service of any maltster or maker of malt, shall maliciously, and with intent to injure such maltster or maker of malt, begin to wet or steep any corn or grain to be made into malt at any other time than between the hours of eight of the clock in the morning and two of the clock in the afternoon; or if any workman, servant, or labourer shall maliciously, and with such intent as aforesaid, empty or take any corn or grain from or out of the cistern at any other time than between the hours of seven of the clock in the morning and four of the clock in the afternoon; or shall maliciously, and with such intent as aforesaid, wet, water, or sprinkle any corn or grain making into malt before the expiration of twelve days or two hundred and eighty-eight hours after the same shall have been emptied or taken from or out of the cistern, or mix, either on the floor or on the kiln, any corn or grain of one wetting or steeping with or amongst any corn or grain of another or different wetting or steeping; every such workman, servant, or labourer shall and may, for any such offence as aforesaid, be arrested and conveyed, by any constable or other lawful peace officer, before any one or more of his Majesty's justices of the peace for the county, shire, division, city, town, or place wherein such workman, servant, or labourer shall be found; and it shall be lawful for any such justice or justices of the peace, on the confession of the party, or by proof on the oath of one or more credible witness or witnesses made of any such of-

(*a*) It is not necessary to name any particular officer in proceedings under the above section of the act. See *Attorney General* v. *Dyer*, 2 *Crom. & Mee.* 664.

(*b*) And see the 1 Vict. c. 40, ss. 10 and 11.

7 & 8 Geo. 4, c. 52.

fence, to convict every such workman, servant, or labourer so offending of such offence, and upon such conviction, by warrant or warrants under his or their hand or hands, to commit such workman, servant, or labourer to the common gaol or house of correction of the county, shire, division, city, town, or place in which such conviction shall take place, for any length of time not exceeding twelve and not less than three months from the day of such commitment; and such workman, servant, or labourer shall, for and during the whole time for which he or she shall be committed, be kept to hard labour in such gaol or house of correction, and shall not, under any pretence or by reason of any authority or order, be discharged therefrom until the expiration of the time for which such commitment shall have been made. Provided always, that nothing herein contained shall extend or be deemed or construed to extend to repeal, alter, or affect any penalty or penalties on the maltster or maker of malt by whom or in whose service or premises any such workman, servant, or labourer as aforesaid shall be employed, by reason of any such offence or offences, but that every such maltster or maker of malt shall still remain and continue liable to all and singular such penalty or penalties, any thing hereinbefore contained to the contrary thereof notwithstanding; unless such maltster or maker of malt shall forthwith prosecute such workman, servant, or labourer as aforesaid to conviction as aforesaid, and shall, before the recovery of any such penalty, produce to the commissioners of Excise if in England, or to the commissioner or commissioners and assistant commissioners of Excise if in Scotland or Ireland, a certificate of such conviction, and of the workman, servant, or labourer so convicted having suffered or being in prison under such sentence, and suffering such punishment as aforesaid."

Maltster to be liable to penalties for such offences, unless he shall prosecute such servant to conviction, &c., and obtain a certificate thereof, and that he has undergone punishment.

Sect. 47 of the 7 & 8 Geo. IV. c. 52, is repealed by the 11 Geo. IV. c. 17, which enacts by sect. 28, "That so much of the said recited act as directs and requires that a book, with proper printed forms and titles for such purposes as thereinafter mentioned, shall be delivered by the proper officer of Excise to every maltster or maker of malt, and that from and after the 10th day of October, 1827, no malt exceeding four bushels at one time, or if to a brewer of beer for sale, in any quantity whatsoever, shall be sold, sent out, or delivered without a certificate, filled up and cut out progressively from the printed forms and titles contained in such book as aforesaid, signed by the maltster or maker of malt selling, sending out, or delivering the same, or by some person on his behalf, certifying the particulars in and by the said recited act required, together with all other regulations, provisions, clauses, and enactments in the said recited act contained, relating to such books, and to the issuing, delivering, or sending out such certificates, filling up any counterparts thereof, or to any trader or other person, or delivering such certificates to any officer of Excise, or to the removal of any malt under or by virtue of any such certificate, and all penalties and forfeitures in and by the act imposed for any breach or neglect of any of the said provisions, regulations, clauses, or enactments relating to the said book and to such certificates, shall be and the same is and are hereby repealed."

Regulations relating to certificates repealed.

Sect. 48 of the 7 & 8 Geo. IV. c. 52, making provision as to daily entries of malt sent out by maltsters, is repealed by the 11 Geo. IV. c. 17, s. 29.

Sect. 49 of the 7 & 8 Geo. IV. c. 52, as to delivery of certificates is repealed by the 11 Geo. IV. c. 17, s. 28, *supra*.

Sect. 50 of the 7 & 8 Geo. IV. c. 52, as to provision that entry shall be made of every building used by malt factors, is repealed by the 11 Geo. IV. c. 17, s. 30.

Sect. 51 of the 7 & 8 Geo. IV. c. 52, is repealed by the 11 Geo. IV. c. 17, which enacts by

Sect. 31, "That so much of the said recited act as directs and re-

Regulations re-

(9). *Malt.*

7 & 8 Geo. 4, c. 52. garding malt factors repealed.

quires that a book, prepared with proper printed forms and titles for such purpose as thereinafter mentioned shall be delivered by the proper officer of Excise to every factor or dealer in or seller of malt, and that every factor or dealer in or seller of malt shall make entries in such book of all malt received into his or her custody, and all regulations, directions, and provisions in the said recited act relating to such book or such entries, shall be and the same is and are hereby repealed."

Sect. 52 of the 7 & 8 Geo. IV. c. 52 is repealed by the 11 Geo. IV. c. 17, which enacts by

Regulations for taking stock of malt repealed.

Sect. 32, "That so much of the said recited act as enacts, that every maltster or maker of malt, within ten days after the tenth day of October in every year, shall cast or place all the malt not then in operation or process of making into malt, in his or her custody or possession, into such level and regular form as may enable the officer of Excise conveniently to gauge and ascertain the true quantity thereof; and if any maltster or maker of malt shall neglect or refuse to cast or place all or any such malt as aforesaid, every maltster or maker of malt so offending shall for every such offence forfeit and lose the sum of 100*l.*,—shall be and the same is hereby repealed."

Sect. 53 of the 7 & 8 Geo. IV. c. 52, as to the penalty and forfeiture incurred for removing malt without certificate, is repealed by the 11 Geo. IV. c. 17, s. 33, which enacts by

Repeal of provisions of recited act not to revive provisions of any former act.

Sect. 34, "Provided always, that the repeal of any of the provisions of the said recited act by this act shall not extend or be construed to extend to revive or put in force any provision contained in any former act or acts; but that all such enactments, clauses, and provisions, in any former act or acts contained, as are by the said recited act directly or indirectly repealed,—shall and the same are hereby declared to continue repealed and of no effect."

Brewers in Ireland to make entry of all premises and utensils used for brewing or storing beer, under penalty of 100*l.*

Sect. 54. "That every brewer of beer for sale in Ireland shall make a true and particular entry in writing of every building, place, vessel, and utensil by him or her intended to be used in or for the brewing or keeping of worts or beer, at the nearest office of Excise, specifying in such entry the particular use or purpose for which such building, place, vessel, or utensil shall be intended to be used as aforesaid; and if any such brewer shall use any building, place, vessel or utensil, without having made such entry thereof as aforesaid, or shall use any building, place, vessel, or utensil for any other or different use or purpose, in or for the brewing or keeping of worts or beer, than the particular use or purpose for which such building, place, vessel, or utensil shall have been entered, every such brewer so offending shall forfeit and lose the sum of 100*l.* for every such building, place, vessel, or utensil as aforesaid; and all worts or beer which shall be found therein, and the casks or other vessels containing the same, shall be forfeited, and shall and may be seized by any officer of Excise. Provided always, that any entry made of any building, place, vessel, or utensil, for any more than one such particular use or purpose as aforesaid, shall be void to all intents and purposes."

Such brewers to specify in their entry all places intended to be used for keeping malt.

Sect. 55. "That every such brewer shall, in the entry by him or her made of any building or place for the brewing of beer, specify and distinguish every building or place in which he or she shall intend to store or keep the malt to be used by him or her in the brewing of beer, and shall store and deposit all such malt in one or more of such entered buildings or places so specified and distinguished, and shall not use or employ any malt in the brewing of beer which shall not have been so stored and deposited in and taken from one or more of such buildings or places so specified and distinguished; and if any such brewer shall store or keep any malt to be used by him or her in the brewing of beer, in any building or place which shall not have been specified and distinguished in such entry as aforesaid, or shall use or employ any malt in the brewing of beer which shall not have been stored and deposited in and taken

Penalty on keeping malt in any place not specified in such entry, 200*l.*

from an entered building or place so specified and distinguished as aforesaid, every such brewer so offending shall for every such offence forfeit and lose the sum of 200*l.*; and all malt which shall be found in any building or place entered or used for the brewing of beer, other than malt taken from one or more of such buildings or places so specified and distinguished, for the purpose of being employed in the brewing of beer, shall be forfeited, and shall and may be seized by any officer of Excise."

Officers may enter any building or other place used by such brewer, for the purpose of inspecting or taking an account of beer or malt therein.

Sect. 56. "That it shall be lawful for any officer of Excise, and any person in aid and assistance of such officer, at any time, either by night or day, to enter into, and remain so long as such officer may think fit, for the purposes hereinafter mentioned, in any building or place belonging to or used by any such brewer for the brewing or keeping of worts or beer, or for the storing or keeping of malt; and it shall be lawful for such officer of Excise, and any person in aid and assistance of such officer, to inspect any such building or place, and to take such account as such officer shall deem necessary of all worts, beer, and malt therein, and of all other matters and things, and of all vessels, utensils, goods, and materials belonging to or in anywise appertaining to the trade or business of such brewer; and if any such brewer shall oppose, molest, obstruct, or hinder, any officer of Excise, or any person acting in the aid or assistance of such officer, in entering into or remaining in any such building or place as aforesaid, or in inspecting the same, or taking any account as aforesaid, or in the due execution of the duty of such officer, every such brewer so offending shall for every such offence forfeit and lose the sum of 200*l.*"

Penalty on obstructing officers, &c. 200*l.*

The different quantities of malt stored and used by such brewers to be entered in book to be kept for inspection of officers.

Sect. 57. "That a book, prepared with proper and distinct columns for such purposes as hereinafter mentioned, shall be delivered by the proper officer of Excise to every such brewer, and every such brewer shall, on the same day on which he or she shall store or deposit any malt in any building or place by him or her entered for the storing or keeping of malt to be used in the brewing of beer, write and enter in such book as aforesaid, and in the proper columns prepared for such purposes respectively, the day when and the number of bushels of malt which he or she shall have so stored or deposited as aforesaid, and the christian and surnames, and place or places of abode, of the person or persons, and whether maltsters or makers of malt, of whom he or she shall have received such malt as aforesaid; and every such brewer shall, on the same day on which he or she shall use any malt in the brewing of beer, and before the same shall be mashed, or any water or other liquor put thereto or mixed therewith, write and enter in such book as aforesaid, and in the proper columns prepared for such purposes respectively, the particular day and hour of the day when and the number of bushels of malt which he or she shall so use as aforesaid; and every such brewer shall keep such book, with all entries made therein, in some public part of his or her entered premises, for the inspection of the officers of Excise, and shall deliver up every such book as aforesaid to any officer of Excise demanding the same, and permit him to make any minute therein, as such officer shall think fit; and if any such brewer shall store or deposit any malt in any building or place by him or her entered for the storing or keeping of malt to be used in the brewing of beer, or shall use any malt in or for the brewing of beer, and shall not write or enter the same in such book as aforesaid, or shall not keep such book as aforesaid, or shall not deliver up the same to any officer demanding such book, or permit any officer to make any minute therein, or shall convey away or conceal the same, or shall destroy or tear out any leaf therefrom, or cancel, obliterate, or destroy or alter any entry therein, or make any false entry therein, every such brewer so offending shall for every such offence forfeit and lose the sum of 100*l.*"

Malt in stock to be laid regularly and

Sect. 58. "That every such brewer shall, when and so often as he or she shall be thereunto required by any officer of Excise, level and cast

(9). *Malt.*

7 & 8 Geo. 4, c. 52.

even, to enable officers to gauge same.

all the malt in any building or place by him or her entered for the storing or keeping of malt to be used for the brewing of beer, in or into such regular form as may enable the officer of Excise easily and conveniently to gauge and ascertain the true quantity thereof; and if any such brewer, upon being thereunto required as aforesaid, shall neglect or refuse to level or cast any such malt in or into such form as aforesaid, every such brewer so offending shall for every such offence forfeit and lose the sum of 100*l.*; and if, upon taking an account of such malt as aforesaid, the quantity of such malt shall be found to exceed the quantity which such brewer ought to have had according to the entries contained in such book as aforesaid, in a greater proportion than one-twentieth part of the quantity of malt so found, every such brewer shall be deemed and taken to have received malt into the building or place by him or her entered for the storing or keeping of malt to be used for the brewing of beer, without having made such entry thereof in such book aforesaid, and shall in such case be liable to the penalty by this act imposed for not making entry in that behalf in such book as aforesaid, and all such excess shall be forfeited, and shall and may be seized by any officer of Excise; and if the quantity of such malt shall be found to be less than the quantity which such brewer ought to have had, according to the entries contained in such book as aforesaid, in such proportion as aforesaid, every such brewer shall be deemed and taken to have used malt in the brewing of beer without having made such entry thereof in such book as aforesaid, and shall in such last-mentioned case be liable to the penalty by this act imposed for not making entry in that behalf in such book as aforesaid."

If any excess or deficiency be found, brewer deemed to have received or used malt without making entry.

Book to be entered up before account taken by officer.

Sect. 59. "That it shall be lawful for any such brewer, before any officer of Excise shall take an account of such malt as aforesaid, to enter up in such book as aforesaid all malt which he or she shall have received into any building or place by him or her entered for the storing or keeping of malt to be used for the brewing of beer, in the course of the day on which such account shall be proposed or intended to be taken; and if any dispute shall arise between any such brewer and the officer of Excise respecting the true quantity of malt so taken an account of as aforesaid, such brewer shall be allowed immediately, and with all due diligence and dispatch, to measure the same in the presence of such officer, by a just and correct bushel measure of the dimensions prescribed by law, to be provided by such brewer; and the quantity so ascertained shall be taken to be the true quantity of such malt, anything in this act to the contrary thereof notwithstanding."

In case of dispute, brewer may measure malt in stock.

Brewers not consuming whole of malt in brewing, or sending out same, or any worts, to forfeit 200*l.*

Sect. 60. "That if any such brewer as aforesaid shall not use or consume in the brewing of beer the whole of the malt received into any building or place by him or her entered for the storing or keeping of malt intended to be used for the brewing of beer, or shall sell, send out, or deliver any such malt, or any worts by him or her brewed for the making of beer, to any person or persons whatsoever, every such brewer so offending shall for every such offence forfeit and lose the sum of two hundred pounds; and all malt and worts so sold, sent out, or delivered as aforesaid shall be forfeited, and shall and may be seized by any officer of Excise. Provided always, that if, upon application made by any such brewer to the commissioner or commissioners and assistant commissioners of Excise in Ireland, it shall appear to them to be reasonable to allow such brewer, under the circumstances stated, to sell any malt received into any building or place by him or her entered for the storing or keeping of malt to be used for the brewing of beer, it shall be lawful for such commissioner or commissioners and assistant commissioners of Excise to grant an order under their hands to such brewer so to do; and every such order shall be sufficient authority to such brewer to sell, send out, or deliver such malt as shall be therein expressed, any thing hereinbefore contained to the contrary thereof notwithstanding."

Commissioners in Ireland may authorize brewers to sell malt under special circumstances.

7 & 8 Geo. 4, c. 52.

Brewers to give notice before beginning to mash any malt of quantity intended to be used.

Sect. 61. "That every such brewer shall, before he or she shall begin to mash any malt to be used for the brewing of beer, and before any water or other liquor shall be added thereto or be mixed therewith, give twenty-four hours' notice thereof in writing to the officer of Excise under whose survey such brewer shall then be (if the brewhouse of such brewer of beer shall be situated in a city or market-town, or in the suburbs thereof, and forty-eight hours' notice thereof if not so situated), in which notice shall be expressed the day and particular hour of the day when, and the quantity of malt which such brewer shall intend to use for the brewing of beer as aforesaid; and if any such brewer shall begin to mash any malt to be used for the brewing of beer, or shall add to or mix with any malt any water or other liquor, without having given such notice as aforesaid, or if any such brewer shall mash any greater or less quantity of malt than the quantity of malt expressed in such notice, every such brewer so offending shall for every such offence forfeit and lose the sum of one hundred pounds."

Penalty, 100*l.*

Mashed malt not to be removed till gauged and taken an account of by officer, under penalty of 100*l.*

Sect. 62. "That no malt which shall have been mashed by any such brewer shall be removed from the vessel or utensil in which the same shall have been mashed until the proper officer of Excise shall have gauged and taken an account thereof; and if any such brewer shall remove any such malt, or any part thereof, before the proper officer of Excise shall have gauged and taken an account thereof, or shall use any means, art, or contrivance, whereby the officer of Excise shall be deceived, or which shall be calculated to deceive such officer in gauging and taking an account thereof, every such brewer so offending shall for every such offence forfeit and lose the sum of one hundred pounds. Provided always, that no such brewer shall incur the said last-mentioned penalty for or by reason of his having removed any such malt as aforesaid, after all the worts shall have been drawn off from the same, and without any officer of Excise having gauged and taken an account thereof, if such brewer shall, at the time of making entry in such book as aforesaid of the malt to be mashed, have specified in such book and entry as aforesaid the time for such officer to attend to take such gauge and account as aforesaid, and such officer shall not have attended for that purpose within an hour after the time so specified."

Proviso for brewers having given due notice.

Brewers to make declaration in book of the strength and quantity of beer brewed.

Sect. 63. "That every such brewer shall, before he or she shall cleanse or remove any beer from any fermenting tun, make a declaration in writing in such book so delivered to him or her as aforesaid, and opposite the quantity of malt therein entered as having been used by him or her for the brewing of beer, of the whole strength or quantity and quality of the beer brewed by such brewer from such malt, which declaration shall at the same time be signed by such brewer, or by his principal servant under whose direction or inspection such beer shall have been brewed; and if any such brewer shall cleanse or remove any beer from any fermenting tun without having made such declaration in writing as aforesaid, or shall cancel, obliterate, destroy, or alter any such declaration as aforesaid, or make any untrue declaration in that behalf, or if any such brewer, or his principal servant as aforesaid, shall neglect or refuse to sign any such declaration, every such brewer so offending shall for every such offence forfeit and lose the sum of one hundred pounds."

Brewers having or using any ingredient in addition or as substitute for malt or hops, or for colouring beer, to forfeit 200*l.*

Sect. 64. "That if any such brewer shall receive into or have in his or her custody or possession, or use in brewing, or mix with or put into any worts or beer, any ingredients, preparation, or material whatsoever, in addition to or for or as a substitute for malt or hops, or for the purpose of diluting or darkening the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing, every such brewer so offending shall for every such offence forfeit and lose the sum of two hundred pounds; and all such ingredients, preparations, and materials, and all worts or beer brewed therefrom, or with or into which the same shall have been mixed or put, and all vessels and uten-

(9). *Malt.*

7 & 8 Geo 4, c. 52.

Persons knowingly selling such ingredients to brewers to forfeit 200*l.*

sils containing any such worts or beer, shall be forfeited, and shall and may be seized by any officer of Excise."

Sect. 65. "That if any person shall sell or deliver to any such brewer as aforesaid, knowing him or her to be such brewer, or to any other person or persons for or on account of or for the use of such brewer, any ingredient, preparation, or material to be used in worts or beer, in addition to or as a substitute for malt or hops, or for the purpose of darkening the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing, every person so offending shall for every such offence forfeit and lose the sum of two hundred pounds."

Malting for distillation.

Sect. 66. "And whereas by a certain act of Parliament passed in the sixth year of the reign of his present Majesty, for providing equivalent rates of Excise duties, allowances, and drawbacks on beer and malt, and on spirits made in Scotland or Ireland, according to the measure of the new imperial standard gallon, a certain allowance is made of the duty charged upon spirits distilled from malt only; and it is expedient to make some further regulations in respect thereof, in order to prevent frauds being practised for the purpose of unduly obtaining such allowance; be it enacted, that from and after the 10th day of October, 1827, no such allowance as aforesaid shall be made in respect of any spirits made after the 10th day of October, 1827, from malt only, in Scotland or Ireland, unless the distiller or maker thereof claiming such allowance shall have distilled all such spirits from such malt only as shall have been made for the sole purpose of being consumed in distilling low wines and spirits from malt only, under the several rules, regulations, and provisions hereinbefore contained, respecting maltsters or makers of malt, and under such further rules, regulations, and provisions as are hereinafter contained in that behalf."

From 10th October, 1827, allowance on spirits distilled from malt to be made only to distillers making spirits from malt made under regulations of act (*a*).

Storehouses to be provided by distillers, and approved of by collector and supervisor, who are to provide locks, &c. at expense of distiller.

Sect. 67. "That every such distiller or maker of low wines or spirits who shall make malt shall make entry as a maltster or maker of malt for the sole purpose of being consumed in distilling low wines or spirits made from malt only, and shall provide and keep a proper and secure building or place at the premises by him or her entered as aforesaid for the purpose of making malt, and also at every distillery by him or her used for distilling low wines or spirits made from malt only, to be approved of in writing by and under the hands of the collector and supervisor of Excise of the collection and district in which any such building or place shall be situated, for securing therein the malt by him or her made, to be used and consumed in his or her distillery or distilleries as aforesaid; and the said collector or supervisor shall provide and affix proper locks and fastenings thereto, at the expense of such distiller or maker of low wines or spirits making entry as aforesaid, who shall be permitted, if he or she shall think proper so to do, to provide and affix other locks and fastenings thereto, the keys of such last-mentioned locks and fastenings to be kept by him or her; and if any such distiller or maker of low wines or spirits making any such entry as aforesaid shall neglect or refuse to pay for any lock, key, or fastening provided and affixed by such collector or supervisor to any such building or place entered by such distiller for the purpose aforesaid, or shall wilfully destroy, damage, or injure any such lock, key, or fastening, or shall by any art, device, or contrivance open, take off, or remove any such lock or fastening, or make any way or entrance into any such building or place, every such distiller or maker of low wines and spirits, making any such entry as aforesaid, so offending, shall for every such offence forfeit and lose the sum of 100*l.*"

Distillers refusing to pay for locks or destroying them, &c. to forfeit 100*l.* (*b*).

Distillers to give notice of taking

Sect. 68. "That every such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid shall give twelve hours'

(*a*) See *post*, 5 Vict. sess. 2, c. 15, s. 3, repealing allowances on spirits made from malt in Ireland.

(*b*) But see 2 Will. IV. c. 29, s. 10, *post*, tit. "*Spirituous Liquors.*"

7 & 8 Geo. 4, c. 52.

notice in writing to the officer of Excise under whose survey such distiller or maker of low wines or spirits shall then be of the day and particular hour of the day when he or she shall intend to take any malt off the kiln; and if any such distiller or maker of low wines or spirits shall take any malt off the kiln without having given such notice as aforesaid, every such distiller or maker of low wines or spirits so offending shall for every such offence forfeit and lose the sum of fifty pounds; and all malt taken off the kiln without such notice as aforesaid shall be forfeited, and shall and may be seized by any officer of Excise."

Malt off kiln, under penalty of 50*l.*

Sect. 69. "That when and so soon as any malt made by such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid shall be fully dried, the same (screened or unscreened, as such maltster or maker of malt may think fit,) shall, in the presence of an officer of Excise, forthwith be measured; and if any quantity be found by such admeasurement over and above the quantity found by the last gauge taken of the corn or grain of which such malt shall have been made whilst in operation or process of making into malt, such excess shall be charged with duty; and all such malt shall be carried by such distiller or maker of low wines or spirits, in the presence of the officer, into and locked up and secured in one or more of such buildings or places by him or her provided as aforesaid, at the premises by him or her entered as aforesaid for the purpose of making malt; and if any such distiller or maker of low wines or spirits shall neglect or refuse to cause all such malt as aforesaid to be measured, and carried or locked up or secured as aforesaid, every such distiller or maker of low wines or spirits so offending, shall for every such offence forfeit and lose the sum of 50*l.*"

Malt, when dried, to be measured in officer's presence, and secured in storehouses, under penalty of 50*l.* (*a*).

Sect. 70. "That books, prepared with proper columns for such purposes as hereinafter mentioned, shall be delivered by the proper officer of Excise to every such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid, to be kept by him or her at the building or place by him or her provided as aforesaid, at the premises by him or her entered as aforesaid for making malt for the purpose aforesaid, and at every distillery by him or her used for distilling low wines or spirits made from malt only; and every such distiller or maker of low wines or spirits shall whenever he or she shall receive any malt into any such building or place by him or her provided as aforesaid, or shall remove or take away any malt out of any such building or place to any other building or place, to be used or consumed in his or her distillery, forthwith write and enter in such book as aforesaid, and in the proper columns prepared for that purpose, the particular day and hour of the day when, and the quantity of malt in bushels which he or she shall have received into or taken or removed out of such building or place as aforesaid; and if any such distiller or maker of low wines or spirits shall receive any malt into or shall take or remove any malt out of any such building or place so provided as aforesaid, and shall not write and make entry thereof in such book as aforesaid, or shall not so keep such book as aforesaid, or shall not deliver up any such book to any officer of Excise demanding the same, or permit the officer to make any minute therein, or shall conceal or convey away the same, or destroy or tear out any leaf therefrom, or cancel, obliterate, or destroy or alter any entry therein, or make any false entry therein, every such distiller or maker of low wines or spirits so offending, shall for every such offence forfeit and lose the sum of 200*l.*"

Distillers to enter into a book the quantity of malt carried into and removed from storehouses, to be used in distillery, under penalty of 200*l.*

Sect. 71. "That when any such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid shall be desirous of taking or removing any malt out of any building or place by him or her provided as aforesaid, at the premises by him or her entered as aforesaid for the purpose of making malt, to a building or place by him or her provided as aforesaid, at a distillery by him or her used for distilling

Distillers desirous of removing malt from malthouse to distillery, to give notice to officer, who is to attend and grant permit (*b*).

(*a*) But see the 2 Will. IV. c. 29, s. 12, *post*, tit. "*Spirituous Liquors.*"
(*b*) *Ibid*, s. 11.

(D). *Malt.*

7 & 8 Geo. 4, c. 52.

low wines or spirits made from malt only, such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid shall give twenty-four hours' notice to the proper officer of Excise of the time when and the quantity of malt which, and the building or place so provided as aforesaid, from and to which he or she shall be desirous of removing such malt as aforesaid; and every such officer of Excise shall attend in pursuance of such notice at the time and place therein mentioned, to unlock the building or place from which such malt is intended to be removed, and see measured out therefrom the quantity of malt expressed in such notice; and such officer of Excise shall thereupon grant a permit for the removal of such malt from and to the buildings or places so provided as aforesaid, and expressed in such notice, in which permit shall be expressed the time for which such permit shall be in force, such time being a reasonable and sufficient time for such removal as aforesaid: and if any such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid, who shall remove any malt as aforesaid, shall not deposit and place the same in the building or place expressed in such permit as the place to which such malt is to be removed, or shall sell or dispose of, or remove the same to any other place than as aforesaid, every such distiller or maker of low wines or spirits making entry in and for the purpose aforesaid, so offending, shall for every such offence forfeit and lose the sum of 200*l.*; and all malt so removed, which shall not be so deposited and placed as aforesaid, or which shall be sold or disposed of or removed to any other place than as aforesaid, shall be forfeited, and shall and may be seized by any officer of Excise; and if any such malt shall be found by any officer of Excise removing or removed, without the same being or having been accompanied by such permit as aforesaid, or accompanied with a permit expired and out of force, or which shall not agree with the quantity of such malt, or the time or manner of the removal thereof, all such malt shall be forfeited, and shall and may be seized by any officer of Excise."

Malt in stock to be laid regular and even, so that the officers may gauge the same, under penalty of 100*l.*

Sect. 72. "That every such distiller or maker of low wines or spirits making entry as and for such purpose as aforesaid shall, when and so often as he or she shall be thereunto required by any officer of Excise, cast all the malt in any building or place so by him or her provided as aforesaid in or into such regular form, and level the same so as to enable the officer of Excise easily and conveniently to gauge and ascertain the true quantity thereof; and if any such distiller or maker of low wines or spirits, upon being thereunto required as aforesaid, shall neglect or refuse to cast or level any such malt as aforesaid, every such distiller or maker of low wines or spirits so offending shall for every such offence forfeit and lose the sum of 100*l.*; and if upon taking any such account as aforesaid the quantity of such malt shall be found to exceed the quantity which such distiller or maker of low (*a*) wines or spirits ought to have had at any such building or place by him or her provided as aforesaid, according to the entries contained in such book as aforesaid, in a greater proportion than one-twentieth part of the quantity of malt so found, every such distiller or maker of low wines or spirits shall be deemed and taken to have received malt into such building or place by him or her provided as aforesaid without having made such entry thereof in such book as aforesaid, and every such excess of malt shall be forfeited, and shall and may be seized by any officer of Excise; and if the quantity of such malt shall be found to be less than the quantity which such distiller or maker of low wines or spirits ought to have had in such building or place according to the entries contained in such book as aforesaid, in such proportion as aforesaid, every such distiller or maker of low wines or spirits shall be deemed and taken to have removed and taken away malt out of such building or place without having made such entry in such book as aforesaid, and shall in every such case of

If any excess above one in twenty be found, distillers to be deemed to have carried malt into storehouse without notice, and if any deficiency, to have taken malt from storehouse without entry.

(*a*) "*lower*" in the act.

excess or deficiency be liable to the penalty by this act before imposed for not making entry in such book as aforesaid."

7 & 8 Geo. 4, c. 52

Distiller clandestinely removing barley or malt out of storehouse, or not consuming same in distillery, &c. to forfeit 100*l.* (*a*).

Sect. 73. "That if any such distiller or maker of low wines or spirits making entry as and for the purpose aforesaid shall take or remove any malt out of any such building or place so by him or her provided as aforesaid, without the knowledge or presence of the proper officer of Excise, or shall not use all the barley by him or her received at any malthouse or premises entered for such purpose as aforesaid, by making the same into malt for the purpose aforesaid, and consume all such malt by him or her made as aforesaid in his or her distillery or distilleries in distilling low wines or spirits made from malt only, or shall sell, send out, or deliver any barley or any of such malt from any such malthouse, or any malt from such distillery, or building or place there, or convey away, hide, or conceal the same, every such distiller or maker of low wines or spirits so offending shall for every such offence forfeit and lose the sum of 100*l.*; and all such barley or malt so taken or removed, and all such barley or malt so sold or sent out or delivered, or hid or concealed as aforesaid, shall be forfeited, and shall and may be seized by any officer of Excise."

From 10th October, 1827, allowances granted by 6 Geo. 4, c. 58, to maltsters or distillers shall not be made, except for spirits distilled from malt made and charged as herein described.

Sect. 74. "That no such distiller or maker of low wines or spirits shall, from and after the said 10th day of October, 1827, be allowed or entitled to claim any part of the allowance granted by the said recited act passed in the sixth year of the reign of his present Majesty, for or in respect of any spirits by him or her distilled or made after that day from malt, except for spirits distilled from such malt only as shall have been made at malting premises entered for the purpose only aforesaid, and which shall have been charged with duty, and which shall have been stored and entered at such distillery in such book as aforesaid, and afterwards taken from such building or place so provided as aforesaid at such distillery, to be used in the distillery of such distiller or maker of low wines or spirits, and at the time of being so taken from such building or place shall have been entered in such book as aforesaid, and shall have been actually used in making wort or wash distilled in such distillery from such malt only; and that every such distiller shall deliver such account and make such declaration as are provided by an act passed in the fourth year of the reign of his present Majesty, for granting certain duties of Excise upon spirits distilled from corn or grain in Scotland and Ireland, save and except as to mashing permits, which, from the day and year above-mentioned, shall be no longer required, and shall be subject to all other the regulations and provisions contained or referred to in the said last-recited act as to malt used by distillers or makers of low wines or spirits for the distillation of spirits from malt only, in Scotland or Ireland, and as to the payment of such allowance, except so far as is altered by or shall be inconsistent with the regulations of this act."

Account to be delivered and declaration made as provided by recited act, except as to mashing permits.

Proviso, that persons other than distillers may make entry of premises for making malt to be consumed only in distillation of spirits from malt only (*b*).

Sect. 75. "That it shall and may be lawful for any person in the United Kingdom, other than such distiller or maker of low wines or spirits, to make entry, as a maltster or maker of malt, of premises for the purpose of making malt to be used and consumed only by distillers or makers of low wines or spirits in Scotland or Ireland, in distilling low wines or spirits made from malt only, under and subject to the same rules, regulations, and provisions to which such distillers of low wines or spirits themselves, making entry as and for the purpose aforesaid, are subjected; and it shall and may be lawful for any such distiller or maker of low wines or spirits to obtain and use such malt in distilling low wines or spirits made from malt only, and to claim and be entitled to and have the allowance aforesaid in respect of such spirits, any thing hereinbefore contained to the contrary thereof notwithstand-

(*a*) See the 2 Will. IV. c. 29, s. 7, *post*, tit. "*Spirituous Liquors.*"
(*b*) *Ibid.* s. 8.

(9). *Malt.*,

7 & 8 Geo. 4, c. 52.

ing: Provided always, that it shall not be lawful for any person making entry, as a maltster or maker of malt, of premises for the purpose of making malt to be used and consumed only as aforesaid, to make or sell malt for any other use or purpose at or from the premises of which he or she shall have made such entry as aforesaid."

In cases of loss or damage of malt by fire or water, justices at quarter sessions, or commissioners of Excise, upon proof thereof, and that duties have been paid thereon, shall grant a certificate of such loss or damage, and duties shall be repaid.

Sect. 76. "That if any malt shall be destroyed or damaged by fire, or shall perish or be damaged by the casting away of or by any inevitable accident happening to any barge or vessel in which such malt shall be transporting or shall have been transported from any part of the United Kingdom to any other part thereof, or on which such malt shall have been put on board for that purpose, it shall be lawful for the proprietor or proprietors of such malt to make proof of such accident, and of the cause thereof, on the oath or oaths of one or more credible witness or witnesses, and of the duty upon such malt having been duly charged and paid by the maltster or maker thereof, before the justices of the peace, at quarter sessions, for the county, shire, division, city, town, or place where such malt shall have been made, or at or next adjoining to the place where such accident shall have taken place or shall have been first discovered, or where the vessel on which such malt shall have been loaded or put on board, or before the commissioners of Excise, or any three of them, who are hereby respectively authorized and required to examine any witness or witnesses thereupon, upon oath (which oath they are hereby respectively authorized to administer), and upon proof being made before them by such witness or witnesses, or by legal documents, that such malt had been entirely lost or totally destroyed as aforesaid, and that the duties thereupon had been duly charged and paid, to grant a certificate thereof, and of the amount of such duties, under their respective hands: upon the production of which certificate to the collector of Excise of the collection in which such duties shall have been charged, such collector shall and he is hereby authorized and required to pay or allow to the proprietor or proprietors of such malt, out of the money arising from any duties of Excise upon malt in his hands, so much money as the sum specified in such certificate as aforesaid for such duties shall amount to; or upon proof being made as aforesaid, that the malt, though not entirely lost or totally destroyed, had been damaged as aforesaid, and that the duties thereupon had been duly charged and paid, it shall be lawful for such justices or commissioners, and they are hereby respectively authorized to adjudge and determine the quantum of such damage, and to grant a certificate of the sum to be repaid or allowed for or in respect of such damage (such repayment or allowance bearing the same proportion only to the whole duty charged and paid upon such malt so damaged as the damage thereof shall bear to the value of such malt before it was damaged); and upon the production of such certificate as last aforesaid to the collector of Excise of the collection in which such duties shall have been charged, such collector of Excise shall and he is hereby authorized and required to repay or allow to the proprietor or proprietors of such malt so damaged, out of the money arising from any duties of Excise upon malt in his hands, so much money as the sum specified in such certificate as last aforesaid to be repaid or allowed shall amount unto."

Sect. 77, making provision that no person shall be entitled to relief for malt destroyed, unless notices be given in manner therein specified, is repealed by the 11 Geo. IV. c. 17, s. 36, which enacts,

Notice to be given on application for relief in cases of malt destroyed or damaged.

By sect. 37, "Provided always, that no person or persons shall be entitled to any relief under the said recited act for any malt destroyed or damaged by fire or inevitable accident, unless a notice in writing, describing the nature, cause, and extent of such accident as aforesaid, shall be delivered to the commissioners of Excise, or to the supervisor of Excise of the district in which such loss shall have taken place or shall have been first discovered, within fourteen days next after the same shall have come to the knowledge of the person or persons

7 & 8 Geo. 4, c 52.

claiming such relief; nor unless such person or persons, or the agent of such person or persons, shall also give or leave notice in writing of his, her, or their intention to apply for such relief with the collector or supervisor of Excise of the collection or district where the quarter sessions are to be held at which he, she, or they intend to apply for such relief, or to the solicitor of Excise for England, where such application shall be intended to be made to such commissioners, ten days at the least before the beginning of such quarter sessions, or before such application to the commissioners; nor unless such person or persons shall also apply for such relief within four calendar months after such accident shall have come to his, her, or their knowledge; anything in this act, or in any other act or acts to the contrary thereof, notwithstanding."

Decisions of justices, &c. to be final.

By the 7 & 8 Geo. IV. c. 52, s. 78, "Provided also, that after such justices of the peace or commissioners of Excise shall have once examined and ascertained such loss or damage, their decision thereon shall be final."

All malt, utensils, and vessels, to be subject to arrears of duty, penalties, and forfeitures (a).

Sect. 79. "That all malt and corn or grain, and all vessels and utensils for the making or keeping of malt, in the custody or possession of such maltster or maker of malt, or in the custody or possession of any other person or persons to the use of or in trust for such maltster or maker of malt, shall be and remain subject and liable to, and the same are hereby made chargeable with, all the duties of Excise on malt which during the time of any such custody or possession shall have been charged or shall become chargeable upon or be in arrear or owing from or by such maltster or maker of malt for or in respect of any malt by him or her made during such time as aforesaid, and shall also be and remain subject and liable to all penalties and forfeitures which during any such custody or possession shall have been incurred by such maltster or maker of malt for any offences by such maltster or maker of malt committed against this act or any acts relating to the revenue of Excise; and all such malt and corn or grain, and all such vessels and utensils as aforesaid, shall be and remain subject and liable to all such duties, penalties, and forfeitures, into whose hands soever the same shall afterwards come, or by what conveyance or title whatsoever the same shall be claimed; and it shall be lawful in all such cases to levy thereupon such duties, penalties, and forfeitures, and to use such proceedings for the recovery or enforcement of such duties, penalties, and forfeitures respectively, as may lawfully be done in cases where the debtors or offenders are the true and lawful owners of such goods, utensils, or vessels" (a).

Former regulations inconsistent with this act repealed.

Sect. 80. "That all laws, powers, authorities, rules, regulations, restrictions, exceptions, provisions, clauses, matters, and things, provided for or contained in any act or acts in force at or immediately before the commencement of this act, relating to the revenue of Excise on malt made in any part of the United Kingdom of Great Britain and Ireland, or relating to permits for the removal of malt, or to any matter or thing expressly provided for by this act, which is or are repugnant to or inconsistent with the several matters, clauses, provisions, and regulations of this act, or any of them, shall be and the same are hereby respectively from the said 10th day of October, 1827, repealed, and shall after that day be no longer put in force or observed in any part of the United Kingdom, save and except as to the recovery of any penalty or forfeiture before that day incurred under or by virtue of any act or acts, or any part or parts of any act or acts by this act repealed as aforesaid."

Fines, penalties, and forfeitures.

Sect. 81. "That all fines, penalties, and forfeitures imposed by this act shall be sued for, recovered, levied, mitigated, and distributed (ex-

(a) And see 4 Vict. c. 20, s. 24.

(9). *Malt.*

7 & 8 Geo. 4, c. 52 to be recovered, mitigated, and distributed as by former laws.

cept where other provisions are by this act specially made in such behalf) by such ways, means, methods, and in such manner, in Great Britain and Ireland respectively, as any fine, penalty, or forfeiture imposed by any act or acts relating to the revenue of Excise in Great Britain and Ireland respectively may be sued for, recovered, levied, mitigated, and distributed."

Act to extend to the United Kingdom.

Sect. 82. "That this act shall extend and be deemed and construed to extend to the whole of the United Kingdom of Great Britain and Ireland, except as to the several rules, regulations, and provisions specially provided for by this act in respect of brewers of beer for sale in Ireland, which shall extend to Ireland only, and the conditions upon which the allowances upon spirits distilled from malt only in Scotland and Ireland are from henceforth to be granted, and which shall extend to Scotland and Ireland only; and this act shall commence and take effect from and immediately after the 10th day of October, 1827."

Exceptions.

Commencement of act.

So much of 9 Geo. 4, c. 55, as enacts that all duty on malt shall be paid within fourteen days after entry made, repealed.

By the 11 Geo. IV. c. 17, sect. 25, "And that so much of an act passed in the ninth year of the reign of his present Majesty, intituled 'An Act to amend and to make perpetual, and to extend to the whole of the United Kingdom, certain provisions contained in several acts for regulating the rectification, compounding, dealing in, or retailing of spirits, and for preventing private distillation, in Scotland, and to provide for the payment of the duty on malt used in making of spirits from malt only,' as enacts, that all duty charged upon or in respect of any malt which shall be made to be used and consumed only by distillers or makers of low wines or spirits in Scotland or Ireland, in distilling low wines or spirits made from malt only, shall be paid and cleared off by the maltster or maker of such malt within the space of fourteen days next after such maltster or maker of malt shall have or ought to have made such entry, as in the said therein-recited act is mentioned, whether any bond or security for the payment of such duties shall or shall not have been given pursuant to the said recited act, on pain that every such maltster or maker of malt shall forfeit double the amount or sum of such duties so neglected or refused to be paid within the said space of fourteen days, any thing in the said recited act to the contrary in anywise notwithstanding, shall be and the same is hereby repealed."

Officer of Excise to make return of duty charged on maltster every six weeks: the amount of such return to be paid in six days, unless security shall have been given.

Sect. 26. "And that the officer of Excise under whose survey any maltster or maker of malt shall be, or any other officer appointed so to do, shall and he is hereby required, from time to time, at the expiration of every six weeks, or at such other times as the commissioners of Excise shall direct, to make out and deliver to the collector of Excise, or to such person or persons as the commissioners of Excise shall appoint to receive the same, an account or return in writing of the quantity of malt made by such maltster or maker of malt, and for which he shall have become chargeable with duty, in such preceding six weeks or period, and of the duty payable thereon; and the return or account of such officer shall be a charge on every such maltster or maker of malt; and such maltster or maker of malt shall pay and clear off the duty appearing by such return or account to have become due and payable within six days after such return or account shall have been made, unless such maltster or maker of malt shall have given and shall maintain, and shall renew from time to time as he may be by the commissioners of Excise required, or persons appointed by them for that purpose, to renew the same, security approved by the commissioners of Excise, or the person or persons who shall be appointed by them for that purpose, by bond in double the value of the duties which such commissioners of Excise, or such person or persons as aforesaid, shall judge likely to arise or be charged on and become due from such maltster or maker of malt within any eighteen weeks, for the due payment at the end of every eighteen weeks after such account or return as aforesaid shall be made of all such duties and sum and sums of money as shall arise or be charged on or become due

from such maltster or maker of malt; and if any maltster or maker of malt who shall not have given such security, or who shall not maintain, and renew, when required so to do, such security, shall neglect or refuse to pay and clear off such duties within six days as aforesaid, every such maltster or maker of malt shall for every such offence forfeit and lose double the sum which such duties so neglected or refused to be paid or cleared off shall amount to."

11 Geo. 4, c. 17.

Sect. 27. "Provided always, that all duty charged upon or in respect of any malt which shall be made to be used and consumed only by distillers or makers of low wines and spirits in Scotland or Ireland, in distilling low wines or spirits from malt only, shall be paid and cleared off within the space of six days next after such account or return shall have been made as aforesaid, whether any bond or security for the payment of such duties shall or shall not have been given, on pain that every such maltster or maker of malt shall forfeit double the amount or sum of such duties so neglected or refused to be paid within the said space of six days."

Certain maltsters in Scotland and Ireland to clear off duty in six days.

Sect. 35. "That if any workman, servant, or labourer employed by or in the service of any maltster or maker of malt shall maliciously, and with intent to injure such maltster or maker of malt, omit to give any notice, or to do any act, matter, or thing required by the said recited act or this act to be given or done, or shall do any act, matter, or thing prohibited to be done by the said recited act or this act, or commit any offence against any of the provisions of the said recited act or this act, whereby such maltster or maker of malt shall be injured or damnified, or subjected to any penalty imposed by the said recited act or this act, every such workman, servant, and labourer so offending shall and may be arrested and conveyed before any one justice of the peace, and convicted by and before such justice, and committed to gaol, and kept to hard labour, in the manner directed by and for the time specified in the said provision of the said recited act; and the said provision is hereby extended to the other offences against the recited act and this act, and made part of this act, as fully and effectually as if the same was hereby repeated and enacted: Provided always, that no such arrest and conviction shall take place or be made for any offence committed by any such workman, servant, or labourer against any provision of the said recited act or this act, after the expiration of one month from the discovery of the offence."

Punishment of servants offending.

Sect. 38. "And that all clauses, enactments, provisions, restrictions, regulations, matters, and things in the said recited act contained, not hereby repealed, shall be and remain in full force and effect."

Recited act to remain in force where not repealed.

Sect. 39. That all the enactments, clauses, powers, and provisions contained in an act made and passed in the 7 & 8 Geo. IV. c. 53, except as the same are hereby expressly altered or repealed, shall extend and be deemed and construed to extend to this act, and this act to commence from the passing hereof.

The 7 & 8 Geo 4, c. 53, extended to this act.

The 1 Vict. c. 49, intituled "*An Act to amend certain laws of Excise relating to the duties on malt made in the United Kingdom*" (12th July, 1837), after reciting that an Act was passed in the seventh and eighth years of the reign of his Majesty King George the Fourth, intituled "*An Act to consolidate and amend certain laws relating to the revenue of Excise on malt made in the United Kingdom, and for amending the laws relating to brewers in Ireland, and to the allowance in respect of the malt duty on spirits made in Scotland and Ireland from malt only;*" and that an act was passed in the eleventh year of the reign of his said Majesty for altering and amending the said act; and that it is expedient to alter and amend the said recited acts, proceeds to repeal the 11 Geo. IV. c. 17, s. 8, which required the keeping of barley books by maltsters.

1 Vict. c. 49.

7 & 8 Geo. 4, c. 52.

11 Geo. 4, c. 17

Sect. 2 enacts "That in all cases in the said recited acts respectively in which any maltster or maker of malt shall be required to give any notice to an officer of Excise, the time for giving such notice shall be

Respecting notices required to be given by maltsters.

(9). *Malt.*

1 Vict. c. 49.

the same as is required to be given where the malthouse is situate in a city or market town, or in the suburbs thereof, notwithstanding the malthouse of the maltster or maker of malt giving such notice may not be so situated."

Sect. 4 repeals the 11 Geo. IV. c. 17, s. 17, which specified what increase should be evidence of treading or forcing together.

Sect. 6 repeals the 11 Geo. IV. c. 17, s. 18, which allowed maltsters to sprinkle grain which had been wetted fifty hours.

Sect. 8 repeals the 11 Geo. IV. c. 17, s. 21, relating to allowances to be made on gauging corn or grain making into malt for the charge of duty.

Allowances to be made on gauging corn or grain making into malt for the charge of duty.

Sect. 9. "That in lieu of the allowances hereby repealed, there shall be made upon the gauges of corn or grain taken whilst the same is in operation or in process of making into malt the allowances following: that is to say, upon every gauge thereof taken by the officer of Excise in the cistern wherein the corn or grain is wetting or steeping to be made into malt, during the time that such corn or grain shall be kept and continued in such cistern, or in the couch frame into which such corn or grain shall be emptied, or on the floor, during the period for which such corn or grain is by the said recited act of the eleventh year of the reign of his said Majesty required to be kept and continued in such couch frame, or directed to be deemed in couch, and gauged and taken account of as in couch, an allowance shall be made by such officer of eighteen bushels and one half bushel in every one hundred bushels of the whole quantity of the corn or grain so found by such gauge; and upon every gauge taken by the officer of Excise of such corn or grain on the floor or on the kiln after the expiration of twenty-six hours if such corn or grain shall have been previously gauged and taken an account of in the couch frame, or if such corn or grain shall not have been so previously gauged then after the expiration of thirty hours, an allowance shall be made by such officer of one half of the whole quantity of such corn or grain found by such gauge before the said corn or grain shall be wholly dried off and removed from the kiln; and the duty of Excise on malt, when charged by gauge upon the corn or grain in a state of operation or in process of making into malt, shall be charged on the best of the several gauges so taken as aforesaid after such allowances shall have been so made thereon respectively as aforesaid."

Commencement of act.

Sect. 12. "That this act shall commence and take effect on the tenth day of October, one thousand eight hundred and thirty-seven."

5 Vict. sess. 2, c. 30.

By the 5 Vict. sess. 2, c. 30, intituled "*An Act to provide Regulations for preparing and using Roasted Malt in colouring Beer,*" [18th June 1842], after reciting that by an act passed in the fifty-sixth year of the reign of his late Majesty King George the Third, intituled "*An Act to repeal an act made in the fifty-first year of his present Majesty, for allowing the manufacture and use of a liquor prepared from sugar for colouring porter,*" brewers of, dealers in, and retailers of beer in Great Britain are prohibited from receiving or taking into or having in their custody, or making or using, or mixing with or putting into any worts or beer, any liquor, extract, calx, or other material or preparation such as had been theretofore or as should thereafter be made use of for or in the darkening of the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing; and that by an act passed in the eighth year of the reign of his late Majesty King George the Fourth, intituled "An Act to consolidate and amend certain laws relating to the revenue of Excise on malt made in the United Kingdom, and for amending the laws relating to brewers in Ireland, and to the allowance in respect of the malt duty on spirits made in Scotland and Ireland from Malt only," brewers in Ireland are prohibited from receiving into or having in their custody or possession, or using in brewing, or mixing with or putting into any worts or beer, any ingredients, preparation, or material whatsoever, in addition to or for or as a

56 Geo. 3, c. 58.

7 & 8 Geo. 4, c. 52.

substitute for malt or hops, or for the purpose of diluting or darkening the colour of worts or beer, other than brown malt, ground or unground, as commonly used in brewing: and that the brown malt mentioned in the said recited acts is malt made brown or dark by being more highly dried on the malt kiln of the maltster in completing the process of malting, and known also as blown malt: and that malt prepared by being roasted in cylinders after the process of malting has been completed, and commonly known as roasted malt or roasted amber malt, has been found to be a preferable material in brewing for darkening or improving the colour of beer and ale; but from the difficulty of distinguishing unmalted grain when roasted from roasted malt great frauds may be committed on the revenue of Excise on malt by the use of such roasted malt; and it is therefore expedient to provide regulations for the preparation, sale, and use of the same; it is enacted, "That from and after the commencement of this act no malt shall be roasted for sale, nor shall any roasted malt be sold, sent out, or delivered by any person, other than a roaster of malt or dealer in roasted malt duly licensed and entered under the provisions of this act."

(9). *Malt.*

5 Vict. sess. 2, c. 30.

Prohibiting the roasting of malt for sale, or the selling thereof except by persons duly licensed.

Sect. 2. "That from and after the fifth day of July one thousand eight hundred and forty-two every roaster of malt before he shall begin to roast any malt, and every dealer in roasted malt before he shall sell, send out, or deliver any such malt, shall take out an Excise licence, authorizing such person to carry on the trade or business of a roaster of malt or dealer in roasted malt, and shall at the expiration of such licence, and yearly from year to year so long as such person shall carry on the said trade or business respectively, renew the same, paying yearly for such licence, if a roaster of malt, the sum of twenty pounds, and if a dealer in roasted malt the sum of ten pounds, and every such licence shall be in force until the fifth day of July in each year, and shall then expire; and every person who shall carry on the trade or business of a roaster of malt, by roasting any malt, or selling, sending out, or delivering any roasted malt, or of a dealer in roasted malt, by selling, sending out, or delivering any quantity thereof, without having taken out or renewed and having then in force such licence as aforesaid, shall forfeit one hundred pounds."

Roasters of malt and dealers in roasted malt to take out licence.

Penalty.

Sect. 3. "That the duties by this act imposed on licences to be taken out by roasters of malt and dealers in roasted malt shall be under the management of the commissioners of Excise for the time being, and shall and may be raised, levied, collected, answered, and recovered, paid over and accounted for, in such and the like manner, and in or by any of the general or special ways, means, or methods by which any other duties of Excise on licences are or may be raised, levied, collected, answered, or recovered, paid over and accounted for; and every such licence shall be in such form as the commissioners of Excise shall direct, and shall be granted by the said commissioners, or their officers duly authorized to grant licences under any law or laws of Excise; and all enactments, provisions, regulations, pains, penalties, and forfeitures under any law or laws of Excise relating to licences shall extend to and be put in force in respect of such licences, and the duties thereon, and the persons required to take out and renew the same respectively, as fully and effectually as if such enactments, provisions, regulations, pains, penalties, and forfeitures were repeated and re-enacted in this act."

Duty on licences to be under management of commissioners of Excise, who shall grant the same.

Sect. 4. "That every roaster of malt shall, before beginning to roast any malt, make a true and particular entry in writing, signed by such roaster of malt, of every warehouse, storehouse, shop, room, or other place, and where situated, intended to be made use of by him for the receiving, preparing, roasting, and keeping of malt, and also of every furnace, cylinder, or other utensil to be made use of in roasting malt, by delivering such entry to the officer of Excise in whose survey his premises shall be situated; and in every such entry every warehouse,

Roasters of malt to make entry of their premises and utensils.

(9). *Malt.*

5 Vict sess 2, c. 30.

storehouse, shop, room, or other place, and every furnace, cylinder, and other such utensil as aforesaid, shall be distinguished by a particular number or letter, or number and letter or letters, and in default thereof every such roaster of malt shall, for every unentered warehouse, storehouse, shop, room, or place, furnace, cylinder, or other such utensil, forfeit two hundred pounds; and every unentered furnace, cylinder, or other utensil, and all malt found therein, shall be forfeited; and every dealer in roasted malt shall, before receiving, selling, sending out, or delivering any roasted malt, in the same manner make a like entry of every warehouse, storehouse, shop, room, and place to be made use of by him for receiving, storing, or keeping any roasted malt, on pain of forfeiting the like penalty; and all malt of any description, unroasted or roasted, found in any unentered warehouse, storehouse, shop, room, or other place, made use of by any roaster of or dealer in roasted malt, shall be forfeited."

Penalty.

Roasters of malt to mark their premises and utensils corresponding to their entry.

Sect. 5. "That every roaster of malt and every dealer in roasted malt shall mark and number, and at all times, on demand in writing of the supervisor of Excise, legibly re-mark and re-number every warehouse, storehouse, shop, room, and other place, and every furnace, cylinder, and other utensil required to be entered by such roaster of malt or dealer respectively, with a distinguishing number or letter, or number and letter or letters, corresponding to the description thereof in the entry of such roaster of malt or dealer respectively; and every warehouse, storehouse, shop, room, or other place, furnace, cylinder, or other utensil, made use of for receiving, preparing, roasting, or keeping malt, which shall not be so marked or numbered, or re-marked or re-numbered, or which shall not correspond with the description thereof in the entry, shall be deemed and taken to be unentered."

Officers of Excise empowered to enter premises of roasters of malt.

Sect. 6. "That it shall be lawful for every officer of Excise at all times to enter into any warehouse, storehouse, shop, room, and other place made use of by any roaster of malt for receiving, preparing, roasting, selling, or keeping of unroasted or roasted malt, or by any dealer in roasted malt for receiving, storing, keeping, or selling any roasted malt, and to remain therein, and to examine and inspect every such warehouse, storehouse, shop, room, and other place, and also all furnaces, cylinders, and other utensils therein, and to examine and take an account of all malt received or kept, or roasting or roasted, in any such warehouse, storehouse, shop, room, or other place, and to take a sample or samples of any such malt (unroasted or roasted); and every roaster of malt and dealer in roasted malt into and in whose warehouse, storehouse, shop, room, or other place as aforesaid any officer of Excise shall, on his request or application, be prevented or hindered from entering or remaining, or examining or taking such account, or taking any such sample or samples as aforesaid, shall forfeit two hundred pounds."

Roasters of malt not to receive any other grain than unroasted malt, and dealers no other than roasted malt.

Sect. 7. "That it shall not be lawful for any roaster of malt to roast, or to receive or take into his custody or possession, any corn or grain, other than unroasted malt which shall have been made by an entered and licensed maltster, and purchased and received from such maltster or from a malt factor, nor for any dealer in roasted malt to receive or take into his custody or possession any corn or grain, other than roasted malt which shall have been roasted by a licensed and entered roaster of malt, and purchased and received from such roaster of malt, with such certificate as hereinafter mentioned; and every roaster of malt who shall receive or take into any warehouse, storehouse, shop, room, or place made use of by him for receiving, preparing, roasting, or keeping malt, or in any house or premises connected therewith, or shall receive or take into any such warehouse, storehouse, shop, room, or place, or house or premises, or have in his or their custody or possession, any malt not made by an entered and licensed maltster, or not purchased or received from such maltster or a malt factor, and every dealer in roasted malt

5 Vict. sess. 2, c. 30.

who shall receive or take into any warehouse, storehouse, shop, room, or place made use of by him for receiving, storing, or keeping roasted malt, or in any house or premises connected therewith, or have in his custody or possession, any unroasted malt, or any roasted malt not roasted by and purchased and received from a licensed and entered roaster of malt, and accompanied with a true and lawful certificate, and every roaster of malt and dealer in roasted malt respectively who shall receive or take into any such warehouse, storehouse, shop, room, or place, house or premises, as aforesaid respectively, or have in his custody or possession, any raw or unmalted corn or grain of any description, roasted or unroasted, mixed or not mixed with any malt, shall forfeit three hundred pounds, and all such malt (roasted or unroasted), corn, or grain shall be forfeited; and if upon the trial of any information for the recovery of the said penalty, or for the condemnation of any malt (roasted or unroasted), corn, or grain, or on the trial in any action brought against any officer of Excise for the seizure of any malt (roasted or unroasted), corn, or grain, any question shall arise whether the commodity in dispute is malt made by an entered and licensed maltster, or bought of such maltster or a malt factor, or is other malt, or whether the same is roasted malt, roasted by a licensed and entered roaster of malt, and purchased or received from such roaster of malt, or whether the same is raw or unmalted grain, the proof shall lie on the defendant in such information or plaintiff in such action, as the case may be."

Penalty.

Sect. 8. "That a book, prepared with proper and distinct columns for such purposes as hereinafter mentioned, shall be delivered by the proper officer of Excise to every roaster of malt and dealer in roasted malt, and every roaster of malt shall, on the same day on which he shall receive any malt into his possession, write and enter in such book, and in the proper columns prepared for such purposes respectively, the day when and the number of bushels of malt which he shall have so received, and the christian and surname of the person or persons, or the name of the firm (if a partnership), and whether maltsters or malt factors, from whom and the place from which he shall have bought and received such malt, and shall upon the next survey or attendance of the officer of Excise produce to him the bill or bills of parcels or invoices for or the delivery note or notes accompanying such malt, and shall show him the said malt, or so much thereof as shall be remaining in case of any part thereof having been roasted and sent out before the survey of the officer, and such officer shall thereupon examine the said malt so received, and shall indorse the said bills of parcels or invoices, or delivery note or notes, with his name and the date of his inspection; and every such roaster of malt shall, on or at the close of the same day on which he shall roast any malt, and before the hour of nine o'clock in the evening, write and enter into such book as aforesaid, and in the proper columns prepared for such purpose respectively, the number of bushels of malt he shall have roasted on that day, and shall also, whenever he shall send out or deliver to any person any quantity of roasted malt, on the same day write and enter in like manner in the said book the day and hour of the day when and the number of bushels of such roasted malt which he shall so send out or deliver, and the christian and surname of the person, or the name of the firm (if a partnership), to whom and the place to which such roasted malt shall be sent; and every dealer in roasted malt shall, on the same day on which he shall receive any roasted malt into his possession, write and enter in such book, and in the proper columns prepared for such purposes respectively, the day when and the number of bushels of roasted malt which he shall have so received, and the christian and surname of the roaster of malt from whom and the place from which he shall have bought or received such roasted malt, and the date of the certificate accompanying the same, and shall on the next survey or attendance of the officer of Excise produce to him the certificate which shall have accompanied such

A malt book to be delivered to every roaster of malt and dealer in roasted malt, in which they shall respectively enter all malt received, roasted, and sent out by them.

(9). *Malt.*

5 Vict. sess. 2, c. 30.

roasted malt, and shall show him such roasted malt, and such officer shall thereupon examine the said roasted malt, and shall indorse the said certificate with his name, and the date of his inspection, or shall take up and retain the same, as he shall see fit; and every such dealer in roasted malt shall, on the same day on which he shall send out or deliver to any person any quantity of roasted malt, write and enter in like manner in the said book the day and hour of the day when and the number of bushels of such roasted malt which he shall so send out or deliver, and the christian and surname of the person, or the name of the firm (if a partnership), to whom and the place to which such roasted malt shall be sent; and every such roaster of malt and dealer in roasted malt respectively shall keep such book, with all entries made therein, in some public and open part of his entered premises, for the inspection of the officers of Excise; and every roaster of malt or dealer in roasted malt respectively who shall receive any unroasted or roasted malt, or shall roast any malt, or send out or deliver any roasted malt, and shall not write and enter such particulars thereof in such book as aforesaid, or shall not keep such book as aforesaid, or shall not deliver up the same to any officer of Excise, on demand, or who shall obstruct or hinder any officer of Excise in making any minute therein or extract therefrom, or shall convey away or conceal the same, or destroy or tear out any leaf therefrom, or destroy or fraudulently alter any entry, or make any false entry therein, and every roaster of malt or dealer in roasted malt respectively who shall receive any malt, and shall not on the next survey or inspection of the officer of Excise produce to him the bill of parcels or invoices, or delivery note or notes, in the case of a roaster of malt, or certificate in case of a dealer in roasted malt, for such malt respectively, and show such malt to such officer, or who shall hinder or obstruct any officer of Excise in examining such malt, shall forfeit two hundred pounds."

Stock account of malt to be taken.

Sect. 9. "That every roaster of malt shall, when and as often as he shall be thereunto required by any officer of Excise, level and cast all the malt, unroasted and roasted, (not being in sacks), in any warehouse, storehouse, shop, room, or place entered by him for keeping malt, in or into such regular form as may enable the officer of Excise easily and conveniently to gauge and take an account of the same, for the purpose of ascertaining and checking the quantity of malt in the possession of such roaster of malt; and every dealer in roasted malt shall, when so required, level and cast all roasted malt in his possession, not being in sacks, into the like form for the like purpose; and where any part of the stock of unroasted or roasted malt of any roaster of malt, or of roasted malt of any dealer in malt, shall be contained in sacks, such roaster or dealer respectively shall, when so required as aforesaid, declare to the officer of Excise the quantity of malt, unroasted or roasted, as the case may be, contained in such sacks or any of them, or the quantity of malt which any one or more of such sacks is capable of containing; and it shall be lawful for any officer of Excise, at any such time as he shall think fit, to measure all malt, unroasted and roasted, contained in sacks, in the possession of any roaster of malt or dealer in roasted malt respectively, with a just and correct bushel measure of the dimensions prescribed by law, to be provided and supplied by such roaster of malt or dealer in roasted malt, who, with his servants respectively, is hereby required to give all necessary aid and assistance to the officer of Excise in gauging and measuring the stock of such roaster or dealer; and if upon any such gauge or measurement, or gauge and measurement, the quantity of malt shall be found to exceed the quantity which such roaster of malt or dealer in roasted malt respectively ought to have in his possession, according to the entries contained in such books respectively as aforesaid, such roaster of malt or dealer in roasted malt shall forfeit two hundred pounds, as having received malt without having made entry thereof in the said book, and all such excess

5 Vict. sess. 2, c. 30.

shall be forfeited; and if the quantity of malt shall be found to be less than the quantity which such roaster of malt or dealer in roasted malt respectively ought to have had, according to the entries contained in such books respectively as aforesaid, such roaster of malt or dealer in roasted malt shall be deemed to have sent out roasted malt without having entered the same in such book, and shall forfeit two hundred pounds: Provided always, that no roaster of malt shall be liable to the said penalties respectively in any case where such increase or decrease shall not exceed ten per centum on the quantity of malt, unroasted and roasted, formed by the balance left on the last account taken and the quantity of unroasted malt since brought into stock; and no dealer in roasted malt shall be liable to the said penalties when such increase or decrease shall not exceed three per centum on the quantity of roasted malt found in like manner, and the quantity since brought in; and every roaster of malt or dealer in roasted malt who shall, when required by any officer of Excise, neglect or refuse to level or cast any malt, unroasted or roasted, into such regular form that the same may be easily and conveniently gauged and taken account of by such officer, or to declare the quantity of malt contained in any sack or sacks, or the quantity of malt which any sack or sacks is capable of containing, or shall falsely declare the same, or to provide such just and correct bushel measure as aforesaid, or with his servants to give all necessary aid and assistance to the officer in the gauging or measuring of all the malt in his possession, or who shall oppose, hinder, or obstruct any officer in taking an account of the same, shall forfeit two hundred pounds."

Book may be made up before taking account, and malt in cylinders may be included.

Sect. 10. "That it shall be lawful for any such roaster of malt and for any dealer in roasted malt, before any officer of Excise shall take such account of malt as aforesaid, to enter up in such book all malt which he shall have received in the course of the day on which such account shall be proposed or intended to be taken; and all malt which shall at the time of the taking of any such account of the stock of any roaster of malt be roasting in any cylinder or other utensils shall be included in and taken into such account."

Malt not to be roasted at night.

Sect. 11. "That it shall not be lawful for any roaster of malt to roast any malt at any time between the hours of seven of the clock in the evening and five of the clock in the morning from the thirty-first day of March to the first day of September, and the hours of seven of the clock in the evening and six of the clock in the morning from the thirty-first day of August to the first day of April, in every year; and every roaster of malt who shall roast any malt between the said prohibited hours shall forfeit one hundred pounds, and all the malt so roasted or roasting."

A certificate book to be delivered to every roaster of malt, and a l roasted malt to be sent out by certificate.

Sect. 12. "That a certificate book, prepared with proper printed forms for such purposes as hereinafter mentioned, shall be delivered by the proper officer of Excise to every roaster of malt and to every dealer in roasted malt, and no roasted malt shall be sold, sent out, or delivered by any roaster of malt or by any dealer in roasted malt without a certificate, filled up and cut out progressively from the printed forms and titles contained in such book, signed by the roaster of malt or dealer in roasted malt selling, sending out, or delivering the same, or by some person on his behalf, with his occupation of roaster of malt or dealer in roasted malt, as the case may be, certifying the place from whence and the day and hour of the day when sent or delivered, the number of bushels of such malt, describing the same as roasted malt, the Christian and surname of the person, or the name of the firm (if a partnership), to whom sold, and the place to which the same shall be sent; and every roaster of malt or dealer in roasted malt shall at the same time make a correspondent entry to such certificate, and containing the same particulars, in the book and counterpart thereof from which such certificate shall be cut; and every such certificate shall accompany such roasted malt on the removal thereof, and shall be left with the

(9). *Malt.*

5 Vict sess. 2, c. 30.

person to whom such malt shall be sold, sent out, or delivered; and every roaster of malt and dealer in roasted malt shall keep the said book, with all entries therein, in some public and open part of his entered premises, for the inspection of the officers of Excise; and every roaster of malt and dealer in roasted malt who shall sell, send out, or deliver any roasted malt without such certificate as aforesaid, or shall not leave such certificate as aforesaid, or who shall make use of the same a second time, or to accompany any other roasted malt than the roasted malt for which it was first cut out of such book as aforesaid, or any other corn or grain purporting or pretended to be roasted malt, or shall not at the same time make a correspondent entry to such certificate as aforesaid, or shall not keep such book as aforesaid, or shall not deliver up such book to any officer of Excise demanding the same, or shall hinder or obstruct any officer of Excise in examining such book, or making any minute therein or extract therefrom, or shall convey away or conceal any such book, or shall destroy or tear out any leaf therefrom, or cancel, obliterate, or destroy or fraudulently alter any entry therein, or make any false entry therein, shall forfeit two hundred pounds; and all roasted malt sold, sent out or delivered, or removed or removing, or received, without such certificate as aforesaid, shall be forfeited."

Penalty.

Brewers intending to use roasted malt to provide deposit rooms in which all roasted malt to be deposited, and the certificate delivered up to the officer of Excise.

Sect. 13. "That every brewer of beer intending to use roasted malt shall provide and make special entry with the officers of Excise of a deposit room or rooms in his brewery for depositing therein all such roasted malt as he shall receive, and all such malt shall be accompanied by such certificate as is by this act required from the roaster of malt or from the dealer in roasted malt from whom the same shall be purchased or received; and every such brewer shall, on receiving any quantity of roasted malt, cause the same to be forthwith deposited and stored in one of such entered rooms in which no other description of malt shall be kept, and shall on the next survey of the officer of Excise deliver up to him the certificate which shall have accompanied such malt, and shall at the same time show to such officer all the roasted malt which shall have been received, or so much thereof as shall remain in case any part thereof shall have been used; and it shall be lawful for such officer, if he shall see fit, to examine and take an account of such roasted malt, and to take any sample therefrom; and every brewer who shall knowingly receive any roasted malt without such certificate as aforesaid, or who shall not deposit and store any such roasted malt received by him in such deposit room as aforesaid, or who shall neglect or refuse to deliver to the officer of Excise on his next survey any certificate received by him, or who shall return to any roaster of malt or dealer in roasted malt, or knowingly deliver to any person but the proper officer of Excise, any such certificate, or who shall neglect or refuse to shew to any officer of Excise any roasted malt received by him, or shall obstruct or hinder any officer of Excise at any time in examining or taking an account of any roasted malt, or in taking any sample thereof, shall forfeit two hundred pounds; and all roasted malt which shall be received by any brewer unaccompanied by a true and proper certificate, as required by this act, or which shall be found in the custody or possession of any brewer in any place (except in the mill or mill room for grinding, or in the mash tun), other than such entered deposit room as aforesaid, shall be forfeited."

Penalty.

All malt received by any roaster shall be roasted on his premises; and all roasted malt shall be sent out un ground.

Sect. 14. "That all malt received by any roaster of malt shall be used by him by being roasted on his entered premises, and all roasted malt shall be sold and sent out by such roaster of malt and by every dealer in roasted malt whole and unground; and every roaster of malt who shall send out or deliver from any premises on which he shall roast malt any unroasted malt, and every roaster of malt and dealer in roasted malt who shall send out or deliver any ground or bruised roasted

5 Vict. sess. 2, c. 30.

malt, shall forfeit one hundred pounds; and all unroasted malt so sent out or delivered by any roaster of malt, and all ground or bruised roasted malt sold, sent out, or delivered by any roaster of malt or dealer in roasted malt, shall be forfeited."

No roasted malt to be bought of any but a licensed roaster.

Sect. 15. "That no brewer or other person shall buy, take, or receive any roasted malt from any other person than an entered and licensed roaster of malt or dealer in roasted malt, on pain of forfeiting one hundred pounds, and all the roasted malt so bought, taken, or received."

No maltster at his malthouse, or within one mile of it, or any druggist or grocer, to be a roaster of malt or dealer in roasted malt.

Sect. 16. "That no maltster or maker of malt, nor any malt factor or dealer in malt, shall, in his malthouse, or on any premises on which such maltster, malt factor, or dealer shall make, or keep any malt, or on any premises within one mile of the same by the nearest public or private road or footpath, nor shall any druggist or vender of drugs, or grocer, carry on the trade or business of a roaster of malt or dealer in roasted malt; but every entry made by any maltster, malt factor, or dealer in malt within such distance as aforesaid, or by any druggist or vender of drugs, or by any grocer, for the purpose of carrying on such trade or business respectively, and every licence taken by any such person for the like purpose, shall be null and void to all intents and purposes."

Power of commissioners to except maltsters whose premises were within prohibited distance before 1st April, 1842.

Sect. 17 provides and enacts, "That where any maltster, malt factor, or dealer in malt shall, before the first day of April one thousand eight hundred and forty-two, have carried on the business of a roaster of malt or dealer in roasted malt on any premises within the said prohibited distance, it shall be lawful for the commissioners of Excise, under such further regulations as they shall prescribe, to permit and allow the said business to be continued and carried on on such premises, any thing hereinbefore contained to the contrary notwithstanding."

Roasters &c. of malt subject to like prohibitions as to custody, &c. of certain articles, &c. as brewers of, or dealers in, or retailers of beer.

Sect. 18 enacts, "That it shall not be lawful for any roaster of or dealer in roasted malt to receive into or have in his custody or possession any of the articles, ingredients, preparations, materials, matters, or things (except roasted malt) prohibited to be received by or to be in the custody or possession of any brewer, dealer in or retailer of beer, in Great Britain and Ireland respectively, by the said recited acts of the fifty-sixth year of the reign of his late Majesty King George the Third, and eighth year of the reign of his said late Majesty King George the Fourth, or to sell, send out, or deliver to any licensed brewer, dealer in or retailer of beer, any of the said articles, ingredients, preparations, materials, matters, or things, on pain of being subject to the respective penalties and forfeitures in the said acts respectively contained, which are hereby extended to and shall be put in force in respect to roasters of and dealers in roasted malt."

Making malt for exportation.

By 12 Geo. I. c. 4, s. 48, and 33 Geo. II. c. 7, s. 14, no malt entered and made for exportation only shall be liable to the duties; and no drawbacks shall be allowed for any malt exported.

Allowance to maltsters for grain made into malt.

By 1 Geo. III. c. 3, s. 9, and 59 Geo. III. c. 3, s. 8, there shall be allowed to every maker of malt for exportation, for every 20 quarters of grain made into malt, 30 quarters when dried and made into malt, and no more, though by the steeping or watering thereof it may be run out into a greater quantity than 30 quarters.

By 12 Geo. I. c. 4, ss. 49, 58, every maker of malt, before he shall begin to wet or steep any grain to be made into malt for exportation, shall leave notice in writing with the officer of the quantity of grain intended to be contained in each steeping, on pain of 50*l.*; and the same shall be kept separate from all other corn to be made into malt for home consumption, on pain of 5*s.* a bushel.

Sect. 50. No maker of malt shall begin to wet or steep any corn to make into malt for exportation above six days before all the corn he may have working on his floors for home consumption shall be dried off; nor shall he begin to wet corn for home consumption above six days before

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all the corn on his floors for exportation be dried and locked up, on pain of 5*s.* for every bushel.

Grain making into malt for exportation to be kept separate until measured.

By 3 Geo. IV. c. 18, s. 12, every maker of malt shall keep each steeping or wetting of grain making into malt for exportation, when the same shall be on the kiln, or after it shall be taken off, separate from any former steepings until the same shall be measured, on pain of forfeiting 50*l.*

By 3 Geo. II. c. 7, s. 16, the maker shall keep the whole quantity of his corn making into malt for exportation of one steeping or wetting, when the same shall be on the kiln, or after it shall be taken off the kiln, separate from any former steeping or wetting until it hath been measured in presence of the officer, on pain of 50*l.*

By 12 Geo. I. c. 3, s. 52, the officers during the steeping of the corn so intended for exportation, and till it be dried and locked up, may gauge and take an account thereof in all its operations, as in case the duties were to be charged thereon.

Sect. 58. And persons opposing the officers in the execution of this act shall forfeit 50*l.*

Notice of taking malt off the kilns.

By 12 Geo. I. c. 4, ss. 51, 53, and 3 Geo. II. c. 7, s. 17, the maker shall give notice in writing to the officer, or leave notice at the next Excise office, of the hour when he intends to take any malt off the kiln, that the officer may attend the measuring; and after it has been measured, it shall (on pain of 50*l.*) be immediately carried on ship-board, or else into storehouses, to be provided by such maker, to be there kept apart from all other malt under two locks, one to be provided by the proprietor, and the other by the officer at the expense of the proprietor, whereof one key to be kept by the proprietor, and the other by the officer, till the same be delivered out for exportation.

Such malt to be exported or stored.

And by 3 Geo. II. c. 7, s. 18, if the maker of malt, or any person with his privity or direction, shall open such lock, or make any way or kind of entrance into the storehouse, or carry any of it away, without knowledge or consent of the officer, or notice given to some officer, he shall forfeit 100*l.*

Notice to be given of the hour when malt for exportation is to be taken off the kiln.

By 3 Geo. IV. c. 18, s. 13, all makers of malt for exportation shall give notice in writing to some officer of the duties upon malt, or leave notice in writing at the next office of Excise where the journal is kept, of the hour when he, she, or they shall intend to take any malt off the kiln or kilns, that such officer may attend the measuring of such malt; and after such malt has been measured, the same shall be immediately carried on ship-board, if intended to be then exported, or else shall be immediately locked up and secured in some storehouse or other place belonging to such maltsters or makers of malt, in the presence of the said officer or officers, on pain of forfeiting the sum of 50*l.*

Such malt to be carried immediately on shipboard, or secured, on penalty of 50*l.*

Storehouse where such malt is secured not to be opened, or entrance made, without giving notice to officer, on penalty of 100*l.*

Sect. 14. If any such maker of malt, or any other person by his order, privity, or direction, after any steeping or making of malt shall have been locked up and secured in any storehouse or other place, in manner as aforesaid, shall open any of the locks or doors, or shall make any way or kind of entrance into such storehouse or other place, or shall remove any part whatsoever of the partition between any such storehouse or place and any other place whatsoever next thereunto adjoining, or shall remove out of the said storehouse or other place any quantity whatsoever of the malt that has been so locked up and secured, without the knowledge and consent of, or without first having given notice to, some officer or officers for the said duties, he, she, or they shall respectively forfeit and lose the sum of 100*l.*

By 12 Geo. I. c. 4, s. 53, when any maker or proprietor shall be desirous to take away any of the malt for exportation, and shall thereof give notice in writing to the officer forty hours before the time he shall desire to take out the same, expressing in such notice the quantity of the malt, and the port to which it is to be removed, the officer shall attend at the place where the malt is locked up, and see it measured and delivered out.

Sect. 54. The officer shall keep an account of the malt so delivered out, and of the person to whom it belongs, and shall give such person a certificate to the officer of the division to which it is intended to be removed, expressing the quantity, the name of the maker or proprietor, and the place whence delivered, who shall file the same, and make an entry thereof; and if the maker or proprietor shall neglect to deliver such certificate, he shall forfeit 50*l.*

Sect. 57. Persons intending to ship malt for exportation shall give at least forty-eight hours' notice before they begin to put it on board to the officer of the port, in writing, of the hour when such shipping is intended to be begun, and the name of the ship, on pain of 5*s.* a bushel.

And if the malt so entered and made for exportation shall not, within nine months next after the making and drying, and carrying into such room, and there locked up and secured as aforesaid, be exported, the proprietor shall, for every bushel, forfeit 5*s.*

Sect. 56. During the shipping, at all such times as the proprietor shall not be actually shipping merchandises, the hatches of the ship shall be kept locked with two locks at each hatch, one to be provided and the key kept by the proprietor, and the other by the officer; and the hatches shall be so kept locked from the time the ship shall be fully loaded till it be ready to sail.

Sect. 58. And persons breaking open the hatches of any ship so locked down shall forfeit 50*l.*

Sect. 55. The officer may not only attend the measuring of such malt, but continue on board the ship till it be cleared out of the port.

Storehouses used for securing malt for exportation to be cleared out every fifteen months, after 5th July, on penalty of 50*l.*

By 3 Geo. IV. c. 18, s. 15, it is enacted, that all and every maltster or maker of malt who shall at any time have any quantity of malt locked up and secured in any storehouse or any other place, as is before directed, to be exported, shall, within fifteen months next after the 5th day of July preceding, remove and clear out of his storehouse or other place all and every part and parcel thereof that at any time after the said 5th day of July shall be locked up and secured in such storehouse or other place, in order to be exported, and shall always from time to time, in every fifteen months after the 5th day of July, remove and clear out of such storehouse or other place, in order to be exported, all and every part or parcel of malt that at any time within the fifteen months next after the 5th day of July preceding shall be locked up and secured in any storehouse, or in any other place that shall be made use of by him, her, or them for the keeping of malt for exportation, on pain of forfeiting the sum of 50*l.*

Malt relanded after being shipped forfeited, and penalty of treble value.

Sect. 16. If after the shipping of any malt made to be exported, the malt so shipped to be exported, or any part thereof, shall be relanded in any part of Great Britain, then, and in every such case, all the malt which shall be relanded, and treble the value thereof, shall be forfeited; (that is to say,) one moiety thereof to the king, and the other moiety thereof to the person or persons who shall seize, inform, or sue for the same; and such malt so relanded shall and may be seized by any officer or officers of Customs or Excise.

Recovery and application of penalties.

Sect. 18. All fines, penalties, and forfeitures imposed or created by this act shall be sued for, recovered, levied, or mitigated by such ways, means, or methods as any penalty may be sued for by any law of Excise, or by action of debt or information in any of his Majesty's courts of record at Westminster, or in the court of Exchequer in Scotland; and one moiety shall be to his Majesty, and the other moiety to him who shall inform, discover, or sue for the same.

Sect. 19. All powers in 12 Car. II. c. 24, and any other law relating to Excise, shall be used and put in execution for the purposes of this act, &c.

By 6 Geo. I. c. 21, s. 4, if any unmalted oats or barley be found mixed among malt shipped for exportation, the person shipping shall forfeit 5*s.* for every bushel.

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By 12 Ann. st. 1, c. 2, s. 30, if ground malt shall be exported, it shall be computed at so many bushels as it contained before it was ground.

Power of justices.

Sect. 9. The penalties, &c., to be sued for, &c. as by the laws of Excise, or in the courts at Westminster; and be employed half to the use of the King, and half to him that shall sue.

Justices may summon witnesses.

By 41 Geo. III. c. 74, s. 11, it shall be lawful for any justice or justices before whom any information shall be exhibited against any maker of malt for any offence against the laws of Excise, respecting the duties on malt, to summon any farmer, maltster, or dealer in or seller of barley or malt, or other person, and to examine such person upon oath, touching the sale or delivery or the purchase or receipt of any barley sold, sent out, delivered, or received by any such farmer, &c. except as to the price or value of such barley or malt; and if any farmer, &c. shall neglect to obey such summons, or refuse to give evidence when required, he shall forfeit 50*l.*

Appeal to quarter sessions on all convictions relating to malt or malt duties.

Sect. 15. And whereas doubts have arisen whether any appeal lay, in certain cases, concerning the making of malt, the duties on malt, or any penalty or forfeiture relating to the same, from any judgment, order, or determination, or any conviction of justices, to the justices assembled at the quarter sessions of the peace—for obviating which doubts be it enacted, that it shall be lawful for any person who shall find himself aggrieved by any judgment &c. of any justice of the peace, in any case relating to or concerning the making of malt, or any of the duties on malt, or any penalty or forfeiture relating to the same, to appeal from such judgment, &c. to the justices assembled at the next general quarter sessions of the peace to be holden for the county, riding, shire, stewartry, city, or place in which such judgment shall have been given, or order, &c. made; which said justices, or the major part of them, so assembled, are thereby empowered to hear and finally determine of and concerning the truth of the facts and merits of the case in question between the parties to such judgment, &c. respectively: and if at such quarter sessions any defect of form shall be found in such proceedings before the justice who gave such original judgment, &c., such defect shall or may be rectified and amended by the order or orders of such justices, or the major part of them, so assembled at such quarter sessions; and no writ of certiorari shall be allowed to set aside any determination or order of the said justices, or the major part of them, so assembled at such quarter sessions: Provided always, that upon every such appeal the said justices so assembled at such quarter sessions shall and do proceed to re-hear, re-examine, and reconsider the truth of the facts and the merits of the case in question between the parties to such original judgment, &c., and to re-examine thereto upon oath the same witnesses, or any of them, and no other, who shall have been before examined upon oath as witnesses before the justice or justices of the peace at the original hearing.

Form of conviction (a).

By sect. 22, every conviction by or before any justices of the peace for any fine, penalty, or forfeiture, fines, penalties, or forfeitures, by this or any other act of Parliament relating to the duties of Excise on malt imposed, may be made in the form following; to wit,

Be it remembered, that on the day of , in the year of our Lord , A. B. was, on the complaint of C. D., *he the said* C. D. *then and there being an officer of Excise, convicted before us two of the justices of the peace for the county of* [or, *for the riding or division of the county of* or, *for the city, liberty, district, or town of* , as the case shall happen to be], *in the penalty of , in pursuance of an act made in the year of the reign of King George the Third, for* [as the case may be]. *Given under our hands and seals, the day and year first above written.*

(a) *The King* v. *Woodcock*, 7 *East*, 146: *The King* v. *Crisp*, 7 *East*, 389: *Ex parte Calvert*, 1 *Anst.* 270.

By sect. 25, all fines and forfeitures shall be sued for, recovered, levied, or mitigated, &c. as any fine, &c. may be by any law of Excise, or by action, &c.; one moiety to his Majesty, the other to him who shall inform, discover, or sue for the same. Recovery and application of fines and penalties.

By 12 Ann. st. 1, c. 2, s. 38, the justices at their quarter sessions may award costs to either party, as they shall think fit, to be levied by warrant of the justices of the county, or two of them, on the goods of the party against whom the same shall be awarded. 12 Ann. c. 2. Costs.

Sect. 37. No writ of certiorari shall be allowed or brought to set aside any order of the justices. Certiorari.

(10). PAPER.

(10). *Paper*

[2 and 3 Vict. c. 23.]

Every maker of paper, pasteboard, and scaleboard (*a*), must take out an annual licence, see *tit.* "Licences," *ante*, p. 644. The amount of such licence is liable to the additional 5*l.* per cent., under the 3 Vict. c. 17. As to the duties on the importation of paper, see *ante*, the 5 and 6 Vict. c. 47, *tit.* "Customs;" and with respect to the powers granted to officers of Excise of attending the delivery of papers imported, see the 3 and 4 Will. IV. c. 52, ss. 52, 53, *ante*, p. 510. Licences.

The present law as to the Excise duties on this particular subject is consolidated and collected in the following statute:—

The 2 & 3 Vict. c. 23, intituled "*An Act to consolidate and amend the Laws for collecting and securing the Duties of Excise on Paper made in the United Kingdom*," (19th July, 1839), after reciting that the laws for collecting and securing the duties of Excise on paper, button-board, millboard, pasteboard, and scaleboard have become numerous and complicated, and it is expedient to consolidate and amend the same, enacts, "That there shall be raised, levied, and collected, allowed, granted, and paid, the duties, allowances, and drawbacks of Excise following; (that is to say), Duties.

On every pound weight avoirdupois of all paper, glazed paper, sheathing paper, button paper, or by whatsoever name any paper may be known, and on all button-board, mill-board, paste-board, and scale-board, made in the United Kingdom, a duty of one penny halfpenny:

For all such glazed or other press papers, made and charged with duty in the United Kingdom, for clothiers and hotpressers, as shall be actually and *bonâ fide* used, employed, and consumed in the pressing woollen cloths and stuffs in the United Kingdom, an allowance of one penny halfpenny the pound avoirdupois: Allowances.

For all paper made and charged with duty in the United Kingdom which shall be used in the printing of any books in the Latin, Greek, oriental, or northern languages within the Universities of Oxford and Cambridge, or within the Universities of Scotland, or the College of the Holy and Undivided Trinity of Queen Elizabeth, Dublin, by permission of the Vice-Chancellors, Rectors, or Principals or Provost of the said Universities respectively, or which shall be used in the printing of Bibles, Testaments, Psalm Books, Books of Common Prayer of the Church of England, the book commonly called or known in Scotland by the name of "The Confession of Faith," or the larger or shorter Catechism of the Church of Scotland, within the Universities of Oxford and Cambridge, and Trinity College, Dublin, by permission of the Vice-Chancellors or Provost of the same, or by the Queen's printers in England, Scotland, and Ireland respectively, an allowance of one penny halfpenny the pound avoirdupois (*b*):

For every pound weight avoirdupois of all paper, sheathing paper, button Drawbacks (*c*).

(*a*) See the 4 & 5 Will. IV. c. 77, as to the repeal of duties, on scaleboard from wood, *ante*, p. 644, n. (*c*), and the 6 & 7 Will. IV. c. 52, as to printers, painters, or stainers of papers.

(*b*) As to the additional duty of 5*l.* per cent. see the 3 Vict. c. 17.

(*c*) Stat. 3 Vict. c. 17, s. 3, allows on any drawback of Excise due on goods and commodities entitled to drawback, on exportation, and which after August 15, 1840, shall be so exported, an additional drawback of 5*l.* per cent.

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paper, button-board, mill-board, paste-board, and scale-board made and charged with duty in the United Kingdom, and which shall be duly exported as merchandize, a drawback of one penny halfpenny:

For every pound weight avoirdupois of printed books in perfect and complete sets, or, if periodical publications, in perfect parts or numbers, and of blank, plain, or ruled account books, whether bound or unbound, made of or printed or ruled on paper made and charged with duty in the United Kingdom, and which shall be exported as merchandize, a drawback of one penny halfpenny:

For every dozen square yards of paper made and charged with duty, and printed, painted, or stained, in the United Kingdom, and exported as merchandize, a drawback of twopence.

Duties and drawbacks to be under management of commissioners of Excise.

Sect. 2. "That the said duties, allowances, and drawbacks shall be under the management of the commissioners of Excise, and shall be collected, paid, and accounted for in the same manner as other the duties, allowances, and drawbacks under the management of the said commissioners, and shall be charged, raised, levied, sued for, granted, and paid under the provisions of this act, and under the general or special provisions, clauses, enactments, regulations, pains, penalties, and forfeitures contained in any act or acts relating to the collection and management of the revenue of Excise."

Paper makers to make entry of their premises.

Sect. 3. "That every paper maker shall, before beginning to make or manufacture any paper of any description, or any button-board, mill-board, paste-board, or scale-board, or to prepare any materials for the same, make a true and particular entry in writing, signed by such paper maker (or by each such paper maker in case of partnership), of every mill, workhouse, storehouse, and other place intended to be made use of for the making, drying, or keeping of paper of any description, or button-board, mill-board, paste-board, or scale-board, or for the keeping or preparing of any materials for making the same, and of all engines, chests, machines, vats, and presses intended to be used in or for the making of paper of any kind, or button-board, mill-board, paste-board, or scale-board, or in preparing the materials for the same, by delivering such entry to the officer of Excise in whose survey his mill or premises shall be situated; and in every such entry every workhouse, storehouse, and other place, and every engine, chest, machine, vat, and press, shall be distinguished by a particular number or letter, or number and letter or letters; and in default thereof such paper maker shall, for every unentered mill, workhouse, storehouse, or place, engine, chest, machine, vat, and press, forfeit two hundred pounds, together with all paper, button-board, mill-board, paste-board, or scale-board and all materials found therein: Provided always, that nothing hereinbefore contained shall require any paper maker to make entry of any half stuff mill, or of any warehouse or storehouse, not forming part of nor communicating with his paper mill, and used wholly and solely for the preparing of half stuff, or for storing or keeping of rags or other materials, and in which no paper, button-board, mill-board, or scale-board, nor any pulp, shall be made or prepared."

Workhouses, storehouses, &c. to be kept marked and numbered.

Sect. 4. "That every paper maker shall mark and number, and at all times keep marked and numbered, every workhouse, storehouse, and other place, and every engine, chest, machine, vat, and press, by him made use of for the making, drying, or keeping of any kind of paper, button-board, mill-board, paste-board, or scale-board, or for keeping or preparing the materials for the same, with distinguishing numbers or letters or numbers and letters corresponding to the description thereof in the entry; and every warehouse, storehouse, or place, engine, chest, machine, vat, and press, made use of for the making, drying, or keeping of paper of any kind, or of button-board, mill-board, paste-board, or scale-board, or for keeping or preparing materials for the same, which shall not be so marked or numbered, or which shall not correspond with the description in the entry, shall be deemed and taken to be unentered."

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Paper mills to be distinguished by letters or numbers.

Sect. 5. "That every paper mill shall be distinguished in the books of the officers of Excise by some letter or number or letter and number, as the commissioners of Excise shall direct; and every paper mill to which any letter or number or letter and number shall have been affixed shall continue to be distinguished by the same letter or number or letter and number during the time that such mill shall continue to be entered by any person, and the business of paper-making carried on therein: Provided always, that where the entry of any mill shall be withdrawn and not renewed, or any mill shall not be worked for the space of two years, it shall be lawful for the commissioners of Excise, if they see fit, to order the distinguishing letter or number or letter and number of such mill to be changed or altered, and for such mill to be distinguished by another or other different letter or number or letter and number."

Two mills not further apart than a mile, when paper removed from one to other to be finished, may be worked as one mill.

Sect. 6. "That where any two or more mills belonging to one person or partnership shall be situated not more than one mile apart from each other, and the paper, button-board, mill-board, paste-board, or scale-board made at either of such mills shall not, for want of sufficient means, be wholly made and finished therein, shall be required to be removed to the other of such mills to be finished therein, it shall be lawful for such mills, by the permission of the commissioners of Excise, and under such regulations as they shall direct, to be worked together as one mill, under one entry and one licence."

Powers for officers of Excise to enter into mills.

Sect. 7. "That it shall be lawful for any officer of Excise, at all times upon his request, to enter into any mill, workhouse, storehouse, or place made use of by any paper maker for the making, drying, or keeping of any paper of any kind or description, or any button-board, mill-board, paste-board, or scale-board, or for the keeping or preparing of any materials for making the same, except half stuff mills and warehouses and storehouses not required to be entered as hereinbefore provided, and to examine and inspect every such mill, workhouse, storehouse, or place, and every engine, chest, machine, vat, press, vessel, and utensil and all paper, button-board, mill-board, paste-board, and scale-board therein, and to examine and take an account of all paper of any kind or description, and of all button-board, mill-board, paste-board, or scale-board, from time to time made or making by any such maker; and every paper maker into whose mill, workhouse, or premises aforesaid any officer of Excise shall, on his request or application, be prevented from entering, shall forfeit two hundred pounds."

Commissioners of Excise to provide stamps for denoting charge of duty.

Sect. 8. "That the commissioners of Excise shall and they are hereby required to provide or cause to be provided proper stamps, with such marks and devices thereon as they shall see fit, for marking or stamping all paper, button-board, mill-board, paste-board, and scale-board, to denote the duty being charged thereon, when made and tied up in the manner hereinafter directed, and shall cause such stamps to be delivered to the officers of Excise for that purpose; and it shall be lawful for the said commissioners of Excise to cause the said stamps, or the marks and devices thereon, to be altered or varied as they shall from time to time see fit."

Commissioners to provide and issue labels.

Sect. 9. "That the commissioners of Excise shall and they are hereby required to provide, and from time to time to cause to be issued to every supervisor of Excise in whose district any paper mill shall be situated, or in which any maker of paper, button-board, mill-board, paste-board, or scale-board shall carry on his manufacture, a sufficient number of labels, of such form and construction, and with such devices thereon as the said commissioners shall deem fit and proper, to be used in the tying up of paper, button-board, mill-board, paste-board, and scale-board, as hereinafter by this act directed; and every such papermaker shall, on his request in writing given to the proper officer of Excise, specifying therein the number of labels which such maker shall require, be within four days after the receipt of such request supplied by such officer with

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the number of labels required, each label being signed by the supervisor of the district for the time being, and marked by such supervisor with the number or letter or number and letter by which the mill of such paper maker is then distinguished in the books of the Excise; and every such paper maker, or his chief workman or servant, shall, at the time of the delivery of such labels, give on the back of the request note requiring the same a receipt in writing, signed by him, for the said number of labels delivered to him by the officer of Excise; and all such labels shall at all times, when demanded by any supervisor of Excise, or other officer of Excise of equal or superior rank, be delivered to the supervisor or other such officer demanding the same; and every paper maker who shall, by himself or his chief workman or servant, refuse to give such receipt as aforesaid for the labels delivered to him, or who shall destroy, cancel, or obliterate any such label, or shall sell or dispose of or use any such label for any other purpose than in tying up paper, button-board, mill-board, paste-board, or scale-board as hereinafter directed, or shall suffer the same to be done, or who shall refuse to produce or deliver to any supervisor or other such officer as aforesaid demanding the same any such label or labels, or shall not satisfactorily account for any label which shall be at any time so missing, shall forfeit for every label so delivered to him, and for which a receipt shall not be given, or which shall be cancelled, obliterated, or destroyed, sold or disposed of, or improperly used or not produced or accounted for, ten pounds."

Paper, &c. to be made up into reams, &c. and to be tied up.

Sect. 10. "That every paper maker shall cause all paper, button-board, mill-board, paste-board, and scale-board made by him to be made up into reams or half reams or parcels, and shall also cause every such ream, half ream, or parcel to be inclosed in a wrapper or wrappers, on or to which wrappers, or one of them if two are made use of, one of the labels hereinbefore directed to be provided and delivered to paper makers shall have been previously firmly and permanently fixed and united with paste or glue or other binding cement, and pressed and dried thereon, and which label, when such ream, half ream, or parcel is tied up, shall be on the top thereof, or on such other part of the ream, half ream, or parcel as the commissioners of Excise shall direct; and every such ream, half ream, or parcel shall, as soon as made up and inclosed in the wrapper or wrappers, be immediately firmly and securely tied up with strong thread or string; and when and so soon as any ream or half ream or parcel of paper, button-board, mill-board, paste-board, or scale-board, shall be tied up in manner aforesaid, the maker thereof shall write or print, in large and legible letters, with durable ink, on the label affixed on the top thereof as aforesaid, the description or denomination and the contents of such ream, half ream, or parcel, whether paper, glazed-paper, sheathing-paper, or button-paper, or button-board, mill-board, paste-board, or scale-board; and every paper maker who shall neglect or refuse to enclose and tie up any ream, half ream, or parcel of paper, button-board, mill-board, paste-board, or scale-board in a wrapper or wrappers, to which, or to one of which wrappers, one of such labels shall have been affixed according to the directions hereinbefore given, or immediately to write or print in manner aforesaid the particulars required to be written or printed on the label affixed on each ream, half ream, or parcel, shall forfeit ten pounds for every ream, half ream, or parcel not inclosed and tied up according to the directions aforesaid, or not having written or printed in manner aforesaid on the label affixed to the wrapper the particulars hereinbefore required to be written or printed thereon, and every such ream, half ream, or parcel shall also be forfeited."

Quantities in which paper, &c. is to be tied up.

Sect. 11. "That a ream of paper, other than glazed-paper, sheathing or button paper, shall consist of twenty quires, each quire containing twenty-four sheets, or forty half quires, each half quire being twelve sheets; and a half ream of paper shall consist of ten quires, or twenty

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half quires, save and except the ream or half ream of paper for printing, which may consist of any number of sheets not exceeding five hundred and sixteen sheets the ream, or two hundred and fifty-eight sheets the half ream, and save and except the outside quires of any ream of paper, which may consist of any number of sheets not less than twenty nor more than twenty-four; and a parcel of glazed paper, sheathing paper, button paper, button-board, mill-board, paste-board, or scale-board shall consist of even dozens of sheets of one and the same denomination or description, and of equal dimensions, and not less than twenty-four nor more than seventy-two such sheets in each parcel; and all paper, glazed-paper, sheathing-paper, button-paper, mill-board, paste-board, or scale-board which shall be made up or tied up in any other quantities than as aforesaid shall be forfeited."

Parcels less than a ream, &c. may be made up, if necessary, on number of sheets being marked on label.

Sect. 12 provides and enacts, "That if from the size of the sheets, or from any other cause, it shall be necessary for any paper maker to make and tie up any paper, other than glazed-paper, sheathing-paper, or button-paper, in any less quantities than a ream or half ream, it shall be lawful for such paper maker to make and tie up such paper in parcels containing a less number of sheets than a ream or half ream, provided that he write and specify on the label attached to the wrapper of such parcel the true number of sheets of paper contained therein: Provided always, that no paper shall be made up into any such parcel or into any half ream weighing less than twenty pounds."

Not to weigh less than twenty pounds.

Paper maker, before tying up paper, may cut edges, and make it to quires without folding.

Sect. 13 enacts, "That it shall be lawful for any paper maker, before tying up any paper, button-board, mill-board, paste-board, or scale-board into reams, half reams, or parcels, to cut the edges thereof, and also for any paper maker to make his paper into quires without folding the same, such quires, when made up into reams or half reams, being separated by a slip of coloured paper."

Weight of ream or parcel to be written on label.

Sect. 14. "That every paper maker shall, at the time when any ream, half ream, or parcel of paper, button-board, mill-board, paste-board, or scale-board is tied up as hereinbefore directed, or at or before the time when the same is or shall be produced to be weighed and charged with duty by the officer of Excise, write on the label on every such ream, half ream, and parcel respectively the weight thereof in large and legible letters, and in words at length, joining to the words expressing the weight the letters "lbs.," or the word "pounds," on pain of forfeiting for every omission or neglect the sum of ten pounds, and the ream, half ream, or parcel of paper, button-board, mill-board, paste-board, or scale-board."

Paper maker desirous of having paper, &c. weighed and charged with duty to give notice to officer.

Sect. 15. "That whenever any paper maker shall be desirous to have any paper, button-board, mill-board, paste-board, or scale-board weighed and charged with duty, such maker shall give to the officer of Excise under whose survey he shall be twenty-four hours' (if the mill of such maker shall be situate in a city or market town, and if situate out of a city or market town forty-eight hours) notice in writing of the particular day and hour of the day when he intends to have his paper, button-board, mill-board, paste-board, or scale-board weighed and charged with duty; and in case such paper maker shall not, at the time mentioned in such notice, or within one hour after, produce to the officer all the paper, button-board, mill-board, paste-board, or scale-board then to be charged with duty, the notice given for weighing and charging the same shall be null and void, and such paper maker shall be obliged to give a fresh and like notice: Provided always, that no other time shall be specified in any such notice for the weighing and charging of any paper, button-board, mill-board, paste-board, or scale-board than between the hours of six of the clock in the morning and six of the clock in the afternoon, and every notice in which any other time for the said purpose shall be specified shall be null and void."

At time specified in notice proper officer to attend.

Sect. 16. "That the proper officer of Excise shall from time to time attend in pursuance of the notice so to be given as aforesaid, and as soon

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and weigh paper, and charge and stamp it.

as such officer shall so attend, or within one hour afterwards, all the paper, button-board, mill-board, paste-board, or scale-board then intended to be charged with duty shall be produced to him, made up, enclosed, and tied up in reams, half reams, or parcels, with the particulars required written or printed on the labels, according to the regulations hereinbefore by this act prescribed, and such officer shall thereupon proceed to weigh and charge with duty all the said paper, button-board, mill-board, paste-board, and scale-board so produced to him; and every paper maker shall, by himself or his workmen or servants, as and when each ream or half ream or parcel of paper, button-board, mill-board, paste-board, or scale-board is put into or taken out of the scale, write on the label affixed to the wrapper thereof the proper progressive number of such ream, half ream, or parcel, and the quarter and year in which the same is so weighed and charged, according to the number of reams, half reams, and parcels of paper, button-board, mill-board, paste-board, and scale-board respectively made by such paper maker at his mill during the current quarter of the year, to be computed from the fifth day of January, fifth day of April, fifth day of July, and tenth day of October in each year, such number to be taken progressively, beginning one, two, and so onwards, according to the number of reams, half reams, and parcels of paper, button-board, mill-board, paste-board, and scale-board respectively made at such mill in each such quarter of a year; and the officer of Excise, having weighed such paper, button-board, mill-board, paste-board, or scale-board respectively, and having seen the progressive number and year and quarter so written on the labels of the respective reams, half reams, or parcels thereof, shall write upon the label of each ream, half ream, and parcel respectively so weighed by him the day of the month and year on which the same shall be so weighed and charged with duty by him, together with any other particulars directed by the commissioners of Excise, and sign the same with his christian and surname, and shall thereupon stamp every such ream, half ream, and parcel with the stamp denoting the charge of duty on the top of every such ream, half ream, or parcel respectively, part of the impression of such stamp being on the label and part thereof on the wrapper, and shall also stamp every such ream, half ream, and parcel respectively on each side thereof, across the edges of the upper and lower wrappers where they join or overlap; and on such other parts of the wrapper or wrappers as he may see fit."

Allowing paper to be tied up, charged, and sent out on rollers.

Sect. 17 reciting "that it is expedient to make provision for paper being tied up and charged with duty, and sent out in single sheets on the rollers on which the same may be rolled or received from the machine, without cutting or making the same up into reams; be it enacted, that every paper maker who shall intend so to send out any paper shall, before using any roller or rollers, mark the true weight of every such roller in legible letters or numbers on the end thereof, and shall continue the same so marked, and shall upon each occasion of using the same produce every such roller so marked to the officer of Excise surveying his mill, who shall ascertain that such weight is correctly marked, and shall sign his name or initials under such mark; and every such paper maker shall cause all such paper, as soon as received from the machine, to be tied up, as hereinbefore directed, in a wrapper or wrappers, on or to which, or one of them, a label has been firmly and permanently fixed and united, but in such manner that the end of the roller having the weight thereof marked thereon shall be open and visible to the officer of Excise, and shall write upon such label all the particulars hereinbefore required to be written by the paper maker on the label; and it shall be lawful for the officer of Excise weighing and charging with duty any such paper, and he is hereby empowered and required to deduct and allow from the weight thereof the even pounds (fractions of a pound being disregarded) marked on the end of the roller on which each parcel of such paper shall be rolled, and the remainder shall be taken as the

weight of the paper on which the duty shall be charged: Provided always, that no such deduction or allowance shall be made in the case of any paper which shall be produced to the officer of Excise in any parcel not having the end of the roller open and visible to the officer of Excise, or rolled on any roller which shall not have the true weight legibly and clearly marked on the end thereof as hereinbefore directed."

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Paper, &c. after being weighed, to be kept separate for twenty-four hours, unless sooner re weighed.

Sect. 18. "That every paper maker shall keep all paper, button-board, mill-board, paste-board, and scale-board, after the same shall have been weighed and charged with duty by the officer of Excise, separate and apart from all other paper, button-board, mill-board, paste-board, and scale-board, and shall not remove or convey away the same from the place where it shall have been weighed for the space of twenty-four hours from the time when such paper, button-board, mill-board, paste-board, or scale-board, shall have been so weighed and charged with duty, unless the same shall be sooner re-weighed by the surveyor or supervisor of Excise, to the end that each surveyor or supervisor may have an opportunity of re-weighing the same after the officer; and if upon the re-weighing of any paper, button-board, mill-board, paste-board, or scale-board any additional weight shall be found, such paper, button-board, mill-board, paste-board, or scale-board shall be liable to and shall be charged with the duty of Excise according to such last-mentioned weight; and every paper maker who shall not keep all paper, button-board, mill-board, paste-board, and scale-board which shall have been so weighed and charged with duty separate and apart from all other paper for the said space of twenty-four hours, or who shall remove the same from the place where weighed before the expiration of the said time, unless the same shall have been re-weighed by the surveyor or supervisor of Excise, shall forfeit fifty pounds."

If paper maker shall desire paper, &c. not to be re-weighed on Sunday, it shall be kept over to Monday.

Sect. 19 provides and enacts, "That if in any case any paper maker shall give a notice for weighing paper, button-board, mill-board, paste-board, or scale-board at such a time as that the twenty-four hours for re-weighing will not or may not expire before some hour of the day on Sunday, and such paper maker shall in such notice for weighing specify that he is desirous such paper, button-board, mill-board, paste-board, or scale-board shall not be re-weighed on the Sunday, it shall not be lawful for the surveyor or supervisor (if unable to attend on the Saturday) to re-weigh such paper, button-board, mill-board, paste-board, or scale-board, or to require any assistance in re-weighing the same, on the Sunday; but in every such case all such paper, button-board, mill-board, paste-board, and scale-board shall continue to be kept separate, and shall not be removed or conveyed away from the place where weighed before the hour of twelve o'clock on the Monday, unless sooner weighed by the surveyor or supervisor."

Paper maker to keep sufficient scales and weights, and allow officers of Excise to use them.

Sect. 20 enacts, "That every paper maker shall and he is hereby required to keep just and sufficient scales and weights at the place in his mill where he shall produce to be weighed and charged with duty any paper, button-board, mill-board, paste-board, or scale-board, and shall also permit and suffer any officer of Excise to use the same for weighing or re-weighing any paper, button-board, mill-board, paste-board, or scale-board; and every paper maker who shall refuse or neglect to keep such scales or weights, or either of them, or who shall not permit or suffer any officer of Excise to use the same for the purpose aforesaid, shall forfeit one hundred pounds; and every paper maker who shall in the weighing of any paper, button-board, mill-board, paste-board, or scale-board, or any roller, make use of, or procure or suffer to be made use of, any false or unjust or insufficient scales or weights, or shall make use of any force or violence, or practise any art, device, or contrivance, by which any officer of Excise may be hindered or prevented or deceived in taking the true account or weight of any paper, button-board, mill-board, paste-board, or scale-board, or charging the true amount of duty thereon, or in ascertaining the true weight of any roller, shall forfeit three

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hundred pounds, together with all the paper, button-board, mill-board, paste-board, or scale-board and every roller weighed or produced to be weighed, and all such unjust or insufficient scales or weights."

Paper maker at all times to bring his paper to be weighed, and assist the officer in weighing.

Sect. 21. "That every paper maker shall, when and as often as he shall be thereunto required by any officer of Excise, bring or cause to be brought, and put into and taken out of the scale, all paper, button-board, mill-board, paste-board, and scale-board in the mill of such paper maker which any such officer shall be desirous to weigh and take an account of, or to re-weigh, and shall also, on the request of such officer, with a sufficient number of his servants, aid and assist such officer in weighing and taking an account of or in re-weighing all such paper, button-board, mill-board, paste-board, and scale-board, on pain of forfeiting for every refusal or neglect fifty pounds."

In weighing paper, &c. for charge of duty, turn of scale to be given in favour of crown, and in lieu thereof two per cent. to be allowed trader.

Sect. 22. "That in the weighing and re-weighing of all paper, button-board, mill-board, paste-board, and scale-board for the purpose of charging the duty of Excise thereon the turn of the scale shall be given in favour of the crown, and in lieu thereof there shall be allowed to the paper maker two pounds weight upon each and every one hundred pounds weight of such paper, button-board, mill-board, paste-board, and scale-board weighed, and so in proportion for any greater or lesser quantity: Provided always, that no weight less than a pound weight shall, in the weighing of any paper, button-board, mill-board, paste-board, or scale-board for the charge of duty, be made use of or allowed to be made use of by any paper maker, on pain of forfeiting the said allowance."

Paper, &c. not charged with duty to be kept separate from charged paper.

Sect. 23. "That every paper maker shall at all times keep all paper, button-board, mill-board, paste-board, and scale-board in his custody and possession which shall not have been weighed by the officer of Excise, and charged with duty, separate and apart from all paper, button-board, mill-board, paste-board, and scale-board which shall have been so weighed and charged, on pain of forfeiting one hundred pounds."

Paper maker not to open any ream, &c. after being tied up, or take out or put in any paper, &c. or alter any of particulars on label.

Sect. 24. "That every paper maker who, after any ream, half ream, or parcel of paper, button-board, mill-board, paste-board, or scale-board shall have been so made and tied up, and the particulars hereinbefore required written or printed on the label on the wrapper thereof, shall, either before or after such paper, button-board, mill-board, paste-board, or scale-board shall have been weighed and charged with duty by the officer of Excise, make any false entry on the label affixed on the cover or wrapper of any paper, button-board, mill-board, paste-board, or scale-board, or deface, obliterate, extract, or fraudulently alter any of the particulars written or printed by such paper maker, or by the officer of Excise, or shall take off, remove, or detach, or cause or permit or suffer to be taken off or removed or detached, any such label from the cover or wrapper of any ream, half ream, or parcel of paper, button-board, mill-board, paste-board, or scale-board, made and tied up under the directions of this act, or who shall use any label, or any wrapper to which any label is affixed, to cover or tie up any other paper, button-board, mill-board, paste-board, or scale-board than that contained in such wrapper, with such label when first tied up, or who shall, after any paper, button-board, mill-board, paste-board, or scale-board shall have been weighed and charged with duty, open any ream, half ream, or parcel, and remove any paper, button-board, mill-board, paste-board, or scale-board out of the wrapper or wrappers in which the same shall have been so weighed and charged, or who shall add any other paper, button-board, mill-board, paste-board, or scale-board thereto, or shall in any respect make any alteration in any such ream, half ream, or parcel, shall for every such label, wrapper, ream, half ream, and parcel respectively in respect of which any such offence shall be committed forfeit twenty pounds, and every such label and wrapper, ream, half ream, and parcel, with the paper, button-board, mill-board, paste-board, or scale-board contained therein, shall also be forfeited."

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Paper maker to enter daily in book an account of paper sent out from mill.

Sect. 25. "That every paper maker shall, daily and every day, enter or cause to be entered in a book to be provided by the commissioners, and delivered to him by the officer of Excise for that purpose, a true and particular account of all paper, button-board, mill-board, paste-board, and scale-board, and of the number of reams, half reams, or parcels, and the progressive number, quarter, and year of every ream, half ream, and parcel thereof respectively, which shall be delivered or sent out from his mill by any such maker, and of the date when sent out, and of the place to which and the conveyance by which the same shall be sent; and such book shall be at all times kept on the entered premises of every such paper maker open to the inspection of any officer of Excise surveying the said premises, who shall be at liberty to make any entry therein or extract therefrom; and every paper maker who shall neglect or refuse to keep such book, or to daily make or cause to be made due entries therein as aforesaid, or who shall make or cause or permit to be made any false entry therein, or shall cancel, obliterate, or fraudulently alter any entry made therein, or tear out or destroy any of the leaves of such book, or shall hinder or obstruct any officer of Excise from or in inspecting such book or making any entry therein or any extract therefrom, shall forfeit two hundred pounds."

Paper maker sending out any ream, half ream, or parcel of paper, &c. not tied up in wrappers, or not having proper label, with particulars thereon, to forfeit 50*l.*

Sect. 26. "That every paper maker who shall sell, send out, deliver, or remove any ream, half ream, or parcel of paper, button-board, mill-board, paste-board, or scale-board without the same being tied up in a wrapper or wrappers on which, or on the uppermost of which, one of such labels as is by this act required shall have been permanently affixed, or not having written or printed on the label affixed to the wrapper all the particulars by this act required to be written and printed on such label, shall, in respect of every such ream, half ream, or parcel so sold, sent out, delivered, or removed, forfeit twenty pounds, and every such ream, half ream, or parcel which shall be found in the possession of any person not having such label, with the particulars aforesaid thereon, shall also be forfeited."

Every ream or parcel of paper, &c. different from marked weight to be forfeited.

Sect. 27. "That if any ream, half ream, or parcel of paper, button-board, mill-board, paste-board, or scale-board shall at any time, on being weighed by any officer of Excise, either at the mill where manufactured or elsewhere, be found to weigh under or over the weight marked, written, or printed on such ream, half ream, or parcel by the maker thereof as hereinbefore required, in the proportion of five per centum if the weight marked on such ream, half ream, or parcel exceed twenty pounds, or ten per centum if such weight be twenty pounds or less, the same shall be forfeited."

Paper maker sending out any paper before charged with duty to forfeit 300*l.*

Sect. 28. "That every paper maker who shall sell, send out, remove, or deliver any paper, button-board, mill-board, paste-board, or scale-board before the duty thereon shall have been fully charged by the proper officer of Excise, or who shall hide or conceal, or cause to be hidden or concealed, or shall remove or convey away or deposit, or cause to be removed or conveyed away from or deposited, in any place, any paper, button-board, mill-board, paste-board, or scale-board, to evade the duty chargeable thereon, or any part thereof, shall, over and above all other penalties, forfeit three hundred pounds, together with all such paper, button-board, mill-board, paste-board, and scale-board respectively."

Regulations under which paper may be removed from one mill to another to be sized or finished.

Sect 29 provides and enacts, "That if any paper maker shall be desirous at any time of sending any paper, before the same is charged with duty, from the mill at which the same shall be made to any other mill, there to be sized or finished fit for use, or to be used as wrappers in tying up paper, button-board, mill-board, paste-board, or scale-board, such maker shall give to the officer of Excise under whose survey he shall be forty-eight hours' notice in writing of such his intention, specifying in such notice the time when such paper is to be sent out, and thereupon such officer shall attend at the time specified in such notice, and take an account of all such paper as shall be produced to

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him, and shall grant a certificate, specifying the quantity and kind of such paper, and the mill from which and the mill to which such paper is to be removed, and thereupon it shall be lawful for the maker thereof to remove such paper, accompanied with such certificate, to the mill specified therein; and all such paper, when removed to the mill where the same is to be sized or finished for use, or used as wrappers, shall be at such mill under the like directions as to tying up, labelling, marking, and stamping, and all other matters and things, as if the same had been sized or finished or used for wrappers at the mill where made, or as if made in the mill to which the same shall be removed."

Regulations as to paper charged with duty at another mill, or returned from a customer.

Sect. 30. "That every paper make who shall receive into his possession or have delivered at his mill any paper, button-board, mill-board, paste-board, or scale-board which shall have been charged with duty at any other mill, or which shall have been sent out by such maker, and returned from any customer or other person, shall mark, write, or print on and distinguish every ream, half ream, or parcel of such paper, button-board, mill-board, paste-board, or scale-board with the number or letter of the mill at which the same shall have been charged with duty, or with the word 'Returned' respectively, as the case may be, and shall keep all such paper, button-board, mill-board, paste-board, or scale-board respectively separate and apart from each other, and from all other paper, button-board, mill-board, paste-board, and scale-board, and shall, on the next succeeding visit of the officer of Excise under whose survey he shall be, give such officer notice in writing thereof, specifying in each such notice the progressive number and weight of each such ream, half ream, or parcel, the number or letter of the mill where charged with duty, the date of the charge, and the person from whom and the place from whence and the day when received by such paper maker, and shall also produce to such officer all such paper, button-board, mill-board, paste-board, and scale-board respectively, and assist such officer in taking a true and particular account thereof; and every such paper maker shall, before he shall again send out, remove, or deliver from his mill any such paper, button-board, mill-board, paste-board, or scale-board, write or print on the label or cover of the wrapper or cover thereof the distinguishing number or letter of his own mill, on pain of forfeiting for every neglect or omission the sum of fifty pounds, and all the paper so received by or returned to him."

Makers of paste-board, not being makers of paper, to use only duty-charged paper.

Sect. 31. "That no paste-board shall be made by any maker of paste-board, not being also a maker of paper, from any material whatever, save and except paper which shall have been charged with the full duties of Excise payable thereon, and which shall not have been printed or written on or previously used for any purpose whatever, on pain of forfeiting all the paste-board which shall be so made from any other materials, and also all the implements and utensils and materials and preparations employed or used in the making thereof, and one hundred pounds."

Maker of paste-board, not being also a maker of paper, to produce to officer all paper before making use of it, in order to its being taken account of.

Sect. 32. "That every maker of paste-board, not being also a maker of paper, shall, before he shall begin to make any paper into paste-board, produce to the officer of Excise under whose survey he shall be, all such paper as shall be intended to be made into paste-board in the original wrappers in which the same shall have been charged with duty, and having on each ream the label, with the particulars hereinbefore required legibly written thereon, and the impressions of the duty stamp, and shall take the said wrappers from the said paper, and destroy the same in the presence of such officer, who shall thereupon take an account of such paper, and of the quantity and weight thereof; and in order to the attendance of such officer, every such maker of paste-board shall give to such officer twenty-four hours' notice in writing of his intention to produce such paper, and shall specify in such notice the true quantity of paper intended to be produced, and the day and hour when

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he intends to produce the same; and every maker of paste-board who shall refuse or neglect to give such notice, or shall use or employ any paper in the making of paste-board before the same shall have been so produced to and taken account of by the officer of Excise, shall forfeit one hundred pounds."

Paper maker or his chief workman to declare that no other than duty-charged paper has been out of mill.

Sect. 33. "That every paper maker, or his chief workman or servant, shall, at the end of every six weeks, before such person as shall be appointed to receive the same, at the chief office of Excise if the mill of such paper maker shall be situate within the limits of the chief office (*a*), or if situate elsewhere before the collector or supervisor of Excise, make and sign a declaration in writing that no paper, button-board, mill-board, paste-board, or scale-board has during such preceding six weeks been removed, carried, or sent, or caused, suffered, or known to have been removed, carried, or sent, from the mill or premises of such paper maker, other than such as has been duly taken account of and charged with duty by the officer of Excise, except paper necessarily used in packing up paper, button-board, mill-board, paste-board, or scale-board, on pain of such paper maker forfeiting for every neglect or refusal to make such declaration fifty pounds; and if any paper maker, or his chief workman or servant, shall make any false or untrue declaration, such paper maker, or chief workman or servant making the same, shall forfeit one hundred pounds."

Officer of Excise to make return of duty charged on every paper maker at end of every six weeks, and amount to be paid in six days.

Sect. 34. "That every officer of Excise under whose survey any paper maker shall be, or any other officer who shall be appointed so to do, shall from time to time, at the expiration of every six weeks, or at such other times as the commissioners of Excise shall direct, make out and deliver to the collector of Excise, or to such other person as the commissioners of Excise shall appoint to receive the same, an account or return in writing of the quantity of paper, button-board, mill-board, paste-board, or scale-board charged with duty at the mill of such paper maker in such preceding six weeks or period, and of the duty payable thereon, according to the weight of such paper, button-board, mill-board, paste-board, and scale-board, and shall also leave a copy of such account or return with such paper maker; and the account or return of such officer shall be a charge on every such paper maker, who shall pay and clear off the duty appearing by such account or return to have become due within six days after such account or return shall be made, or in default thereof shall forfeit double the amount of such duty."

In making up charge against maker of paste-board, not being also a maker of paper, duty on paper to be deducted.

Sect. 35 provides and enacts, "That every officer of Excise, in making out such account or return of the quantity of paste-board charged during any period of six weeks on any maker of paste-board, not being also a maker of paper, and of the duty payable thereon, shall deduct and allow in such account or return the amount of duty charged on the paper from which such paste-board shall have been made according to the weight thereof when taken account of by the officer of Excise at the time of the same being produced to him under notice, according to the provisions hereinbefore mentioned, and the remainder or balance, after such deduction and allowance, shall be the amount of duty payable by such maker of paste-board under such return."

No person to carry on business of a stationer at a mill, nor maker to be a stationer within one mile of his mill.

Sect. 36. "That no person whatever shall carry on or be concerned in the trade or business of a retail stationer, or dealer in paper, button-board, mill-board, paste-board, or scale-board, at any paper or paste-board mill, nor shall any paper maker carry on or be concerned or interested in the business of a retail stationer or dealer in paper in or on any premises within the distance of one mile by the nearest ordinary road or path of a paper mill wherein he shall make paper, button-board, mill-board, paste-board, or scale-board, or be concerned or interested, on pain of forfeiting two hundred pounds."

(*a*) See the 4 Vict. c. 20, s. 2; and *ante*, tit. "*Entries.*"

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Stationer, printer, paper stainer, and maker of paste-board not to receive into their possession, and no other person to receive from a mill, paper in less quantity than a ream or half ream, in wrappers.

Sect. 37. "That no stationer or printer or paper stainer, or maker of paste-board not a maker of paper, shall receive into his custody or possession, nor shall any other person remove or receive from any mill, any paper, button-board, mill-board, paste-board, or scale-board which shall not be an entire ream or half ream or parcel, enclosed in a wrapper or wrappers having a label thereon, with such particulars as are hereinbefore required written thereon, together with the impressions of the officer's stamp denoting the charge of duty, on pain of forfeiting one hundred pounds; and all paper, button-board, mill-board, paste-board, and scale-board so received, and all paper, button-board, mill-board, paste-board, and scale-board which shall be found in the custody or possession of any stationer or printer or paper stainer, or maker of paste-board not a maker of paper, (not being broken reams, or parcels for immediate sale, use, or consumption), without being inclosed in a wrapper so labelled, and with such impressions of the duty stamp thereon as aforesaid, shall be forfeited, and the stationer or printer or paper stainer or maker of paste-board in whose possession the same shall be found shall forfeit fifty pounds: provided always, that nothing herein contained shall extend to subject any stationer to the said first-mentioned penalty for or by reason of his obtaining or receiving from any other stationer any paper, button-board, mill-board, paste-board, or scale-board in less quantity than a ream, half ream, or parcel for immediate use."

Every person on opening paper, &c. to write across or otherwise deface label.

Sect. 38. "That every person shall, on opening any ream, half ream, or parcel of paper, button-board, mill-board, paste-board, or scale-board received into their possession, immediately write in large letters in ink upon the label attached to the wrapper the word 'opened,' or shall across such label with ink or otherwise permanently cancel, obliterate, and deface the same, so as to prevent the said label from being again made use of by any paper maker; and every person who shall not, on opening any such ream, half ream, or parcel as aforesaid, immediately so write on or cross or otherwise cancel, obliterate, or deface such label, or in whose possession any such label, whether attached or not to any wrapper which shall have been opened, shall be found not so written upon, crossed or otherwise cancelled, shall forfeit for each such label ten pounds, and every such label, with any wrapper to which the same may be attached, shall also be forfeited."

Penalties on persons returning labels or wrappers which have been used, and on paper makers and their servants receiving or having such labels or wrappers.

Sect. 39. "That every person who shall restore, return, send, or deliver, or cause or procure, permit or suffer, to be restored, returned, sent, or delivered, to any paper maker, or to any mill, warehouse, room, or place, belonging to any paper maker, or to any other place for the use of any paper maker, any wrapper or label which has been before used as a wrapper or label in tying up any paper, button-board, mill-board, paste-board, or scale-board, or which shall be marked and stamped with the marks, stamps, or impressions directed by this act to be marked and stamped on the labels attached to and the wrappers enclosing any paper, button-board, mill-board, paste-board, and scale-board, and every paper maker who shall receive, or shall cause, procure, permit, or suffer to be returned, sent, or delivered to him, or to be kept or deposited at any mill, warehouse, room, or place belonging to him, or at any other place for his use, or who shall have in his custody or possession any wrapper or label which has been before used as a wrapper or label to any ream, half ream, or parcel of paper, button-board, mill-board, paste-board, or scale-board, or in or with which any paper, button-board, mill-board, paste-board, or scale-board has been removed, carried, or sent out by any paper maker, shall forfeit two hundred pounds; and every workman and servant of any paper maker in whose custody or possession any such wrapper or label shall be found shall also forfeit fifty pounds, over and above any penalty to which the paper maker may thereby become subject."

Penalty not to be

Sect. 40 provides and enacts, "That nothing hereinbefore contained

shall extend or be deemed or construed to extend to render liable to the said penalty of two hundred pounds any person for or by reason of such person returning or sending back to any paper maker any wrapper, with the label thereon, which shall have been opened, containing therein the same identical paper, button-board, mill-board, paste-board, or scale-board received by such person, and by him returned on account of the same being disliked or refused, nor to render liable to the said penalty any paper maker for receiving back the said label and wrapper containing such paper, button-board, mill board, paste-board, or scale-board."

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Sect. 41 enacts, "That every stationer or other person who shall have bought, received, or agreed for any paper, button-board, mill-board, paste-board, or scale-board respectively which may be forfeited or liable to seizure under this or any other act relating to the revenue of Excise, and who shall discover to and inform any officer of Excise thereof, so as to cause the seizure of the same, shall, on the condemnation of the paper, button-board, mill-board, paste-board, or scale-board so seized by the officer, be paid, by order of the commissioners of Excise, the value of all such paper, button-board, mill-board, paste-board, or scale-board which shall be so seized and condemned, and for which such stationer or other person shall have actually paid or be liable to pay and shall pay, and such payment shall be deemed a part of the expences attending the seizure."

Any stationer having paper liable to seizure, and giving notice thereof so as to cause its seizure, shall on its condemnation be paid value of it.

Sect. 42. "That every paper maker and other person who shall counterfeit, forge, or imitate, or cause or procure to be counterfeited, forged, or imitated, any stamp, die, device, or label, or any figure, letter, or part of any stamp, die, device, or label, directed to be provided and used in pursuance of this act, or which shall have been provided in pursuance of any other act in force for securing the duties on paper at the passing of this act; or shall have in his custody or possession any such counterfeit, forged, or false stamp, die, device, or label, or any counterfeit, forged, or false figure, letter, or part of any such stamp, die, device, or label, knowing the same to be counterfeit, forged, or false; or who shall, upon any wrapper used or to be used for tying up any quantity of paper, button-board, mill-board, paste-board, or scale-board, or upon any such label as aforesaid, counterfeit, forge, or imitate, or cause or procure to be counterfeited, forged, or imitated, the mark or impression of any such stamp, die, or device, or of any figure, letter, character, or part of such stamp, die, or device, or shall knowingly have the same in his custody or possession; or who shall have in his custody or possession, or utter, vend, or sell, any paper, button-board, mill-board, paste-board, or scale-board with a counterfeited, forged, false, or imitated mark or impression of any such stamp, die, or device, or any figure, letter, character, or part thereof, on the wrapper of such paper, button-board, mill-board, paste-board, or scale-board, or on the label affixed thereto or thereon, or with any false, counterfeit, or forged label aforesaid, or any false, counterfeit, or forged figure, letter, character, or part of such label as aforesaid, or with any false, counterfeited, or forged printing or writing on any such label, knowing the same or any part thereof to be counterfeited or forged; or who shall upon any quantity of paper, button-board, mill-board, paste-board, or scale-board put or place any wrapper or part of any wrapper, or any label or part of any label, having thereon or therein any false, counterfeit, or forged writing, printing, letter, figure, character, mark, or impression, knowing the same to be false, counterfeited, and forged; or who shall, upon any ream, half ream, or parcel of paper, button-board, mill-board, paste-board, or scale-board not taken account of and charged with duty by the proper officer of Excise put or place any of the stamps or impressions directed by or provided or used in pursuance of this act or any such other acts as aforesaid; shall for every such false, counterfeit, or forged stamp, die, device, or label, or figure, letter, character, or part of such stamp, die, device, or label, forfeit and lose the sum of one thou-

Penalty on forging stamps and counterfeiting labels.

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sand pounds, and for every such wrapper, ream, half ream, or parcel respectively the sum of five hundred pounds; and every such false, counterfeited, and forged stamp, die, device, and label, figure, letter, character, and part of such stamp, die, device, or label, and every such false, counterfeit, and forged impression, and every such wrapper, ream, half ream, and parcel respectively, shall be forfeited."

Penalty for altering number of mill or weight on label.

Sect. 43. "That every paper maker, stationer, or other person who shall alter the distinguishing letter or number of any mill on the label attached to the wrapper of any ream, half ream, or parcel of paper, button-board, mill-board, paste-board, or scale-board, save and except in the case of paper sent from one mill to another, or returned to any mill, under the provisions hereinbefore contained, or who shall alter the weight inserted on any such label, shall forfeit twenty pounds, together with the ream, half ream, or parcel to which such label shall be attached."

Regulations for obtaining allowance of duty on books printed in Latin, Greek, Oriental or Northern languages in the Universities.

Sect. 44. "That the allowance of the duty on paper used in the printing of books in the Latin, Greek, Oriental, or Northern languages within the Universities of Oxford and Cambridge, the Universities of Scotland, and the University of Trinity College, Dublin, shall be made and allowed in manner following; (that is to say), the chief manager of the press in the said Universities respectively shall, forty-eight hours before any such paper shall be begun to be printed, give to the proper officer of Excise a notice in writing of the intention to print such paper, specifying the number of reams of paper and the title of the book intended to be printed, and of how many copies the edition is to consist; and upon the attendance of the officer of Excise all such paper shall be produced to him enclosed in the original wrappers in which the same was charged with duty, with the respective labels thereon, and the several matters hereinbefore prescribed to be marked, written, or printed and stamped on such labels and wrappers remaining thereon; and such chief manager of the press shall provide sufficient scales and weights, and shall permit and assist such officer to use the same, and to ascertain the weight of such paper; and within one month after the whole of such edition shall have been printed off such chief manager shall give to the proper officer of Excise forty-eight hours' notice in writing, specifying a day and hour when such edition will be ready to be produced to him, and thereupon such officer shall attend and examine and weigh the whole of such edition unbound and in sheets, and thereupon give to such chief manager a certificate of his having so done, specifying the name of the book, the size thereof, the number of copies of which the edition consists, and the weight of the paper on which it is printed; but if such weight shall exceed the weight of the paper taken account of by the officer previous to the printing, such last-mentioned weight shall be inserted in the certificate, and the allowance shall be made for no more."

Declaration to be made by the chief manager of the press.

Sect. 45. "That the chief manager of the press in the said Universities respectively shall make and subscribe at the foot or on the back of such certificate as aforesaid, before the vice-chancellor, principal, or rector or provost of the University respectively, a declaration in writing setting forth that the whole of the edition of the book so printed was and is printed for the University for which the same expresses to be printed, and that no bookseller or other person had or hath any share or interest therein, or in the allowance payable in respect of the paper on which the same was or is printed."

Regulations for obtaining the allowance on paper used in printing Bibles, Testaments &c in Universities of Oxford, Cambridge, and Dublin, or by Queen's printers.

Sect. 46. "That the allowance of the duty on paper used in the Universities of Oxford and Cambridge, and in the University of Trinity College, Dublin, or used by the Queen's printers in England, Scotland, or Ireland respectively, in the printing of Bibles, Testaments, Psalm Books, Books of Common Prayer of the Church of England, the book commonly known in Scotland by the name of 'The Confession of Faith,' or the larger or shorter Catechism of the Church of Scotland, shall be made and allowed in manner following; (that is to say), the

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chief manager of the press of such Universities respectively, or such Queen's printers respectively, shall, forty-eight hours before any such paper is begun to be prepared for printing, give to the proper officer of Excise a notice in writing of the intention to print such paper, specifying in such notice the number of reams of paper so intended to be printed, and whether the same is to be printed for Bibles, Testaments, Psalm Books, Common Prayer Books, Books of Confession of Faith, or the larger or shorter Catechism, of what size the intended impression or edition of such book is to be, and of how many copies the same is to consist; and all the paper intended to be used shall, on the attendance of the officer of Excise, be produced to him enclosed in the original wrappers in which the same was charged with duty, with the respective labels thereon, and the several matters hereinbefore prescribed to be marked, written, or printed and stamped on such labels and wrappers remaining thereon; and such chief managers and Queen's printers respectively shall provide good and sufficient scales and weights, and shall permit and assist the officer of Excise to use the same, and to ascertain and take an account of the true quantity and weight of such paper; and such chief managers of the press and such Queen's printers respectively shall, within one month after the whole of such impression or edition shall have been printed off and finished, give to the proper officer of Excise forty-eight hours' notice thereof in writing, specifying a day and hour when such impression or edition will be ready to be produced to him, and thereupon such officer of Excise shall attend, and inspect, examine, and weigh the whole of such edition unbound and in sheets, and shall thereupon give and deliver to such chief manager of the press or Queen's printer, as the case may be, a certificate in writing of his having so done, specifying therein the name of the book, together with the size thereof, and the number of copies of which such impression or edition consists, and the weight of the paper on which the same is printed; but if such weight shall exceed the weight of the paper actually produced to and taken account of by the officer of Excise previous to the printing thereof as aforesaid, then and in such case such last-mentioned weight shall be inserted in such certificate, and the allowance shall be made for no greater weight than the weight specified in such certificate."

Declarations to be made by the chief manager of the Universities and by Queen's printers.

Sect. 47. "That the chief manager of the press in the said Universities respectively shall make and subscribe, at the foot or on the back of such certificate, before the vice-chancellor or provost of the University, a declaration in writing setting forth that no drawback or allowance has been before granted or paid on such paper, and that the whole of the edition of such book so printed is printed for the University for which the same expresses to be printed, and that no bookseller or other person had or hath any share or interest therein, or in the allowance payable in respect of the paper on which the same is printed; and the Queen's printers in England, Scotland, and Ireland respectively, or the acting patentee in such office, shall make and subscribe, at the foot or on the back of such certificate, before the commissioners of Excise, or such person as the commissioners of Excise shall direct and appoint to receive the same, a declaration in writing setting forth that no drawback or allowance has been before claimed or paid for or in respect of the paper mentioned in such certificate, or any part thereof, and that the whole of such impression or edition of such Bible, Testament, Psalm Book, Book of Common Prayer, Confession of Faith, or larger or shorter Catechism has been printed by him or them at his or their usual and ordinary printing house, on his or their own account, under and by virtue of the exclusive patent or privilege belonging to him or them as such Queen's printer, and for his or their sole and entire benefit, profit, emolument, and advantage."

On production of certificate, with declaration subscribed, to com-

Sect. 48. "That on the said certificates respectively, with such declaration as aforesaid made and subscribed thereon, being produced to the commissioners of Excise, the said commissioners shall and they are

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hereby required, on being satisfied of the correctness thereof, to cause payment of the amount of the allowance appearing by such certificate to be due to be made to the chief manager of the press of the said Universities respectively, or to such person as the vice-chancellor, principal, or rector or provost of the said Universities respectively shall appoint to receive the same, or to such Queen's printer by whom or on whose behalf such certificate shall be produced, as the case may be."

As to allowances to be granted on books printed in Latin, Greek, Oriental, or Northern languages.

Sect. 49. "That no such allowance shall be granted or paid on any book in the Latin, Greek, or Oriental or Northern languages unless such book shall be wholly printed in the Latin, Greek, Oriental, or Northern languages, as the case may be: Provided always, that it shall be lawful for the commissioners of her Majesty's Treasury, if they shall see fit, to direct such allowance to be made and granted on any book partly in the Latin, Greek, or Oriental or Northern languages, and partly in the English or any other language."

Any house or place approved by lords of Treasury, and used by Queen's printer, to be deemed his ordinary printing house.

Sect. 50. "That every house, office, or place heretofore approved of or which may hereafter be approved of by the commissioners of her Majesty's Treasury, in which the Queen's printers in England, Scotland, and Ireland respectively shall have printed or may hereafter print, by themselves or their own *bonâ fide* agents, and not by others, and for their own sole and undivided interest, the whole of any impression or edition of any Bible, Testament, Psalm Book, Book of Common Prayer, Confession of Faith, or larger or shorter Catechism, shall be deemed and taken to be an ordinary and usual printing house of such Queen's printer within the meaning of this act for entitling such Queen's printer to the allowances aforesaid."

Regulations for obtaining allowance on paper used in pressing woollen cloths.

Sect. 51. "That the allowance of the duty to clothiers, hotpressers, and other persons concerned in the woollen manufactures, for or in respect of glazed and other press papers used, employed, and consumed in the pressing woollen cloths and stuffs, shall be made and granted in manner following; (that is to say), all such glazed paper or press paper in respect of which any such allowance is intended to be claimed shall be examined by an officer of Excise before the same is made use of; and in order to such examination every clothier, hotpresser or other person who shall intend to apply for or claim any such allowance shall, before he shall begin to make use of any such glazed or other press paper, give forty-eight hours' notice in writing to the proper officer of Excise, specifying a day and hour when he will produce to such officer any glazed paper or press paper, and the quantity of such paper to be produced, and the name and residence of the paper maker or other person from whom the same was received, and the particular time when received; and such officer shall attend at the time specified in such notice, and thereupon such clothier, hotpresser, or other person shall produce to such officer all the glazed paper or press paper specified in such notice in the original wrappers in which the same was charged with duty, with the labels, having the several particulars required by this act printed or written and marked and stamped thereon, attached to such wrappers respectively, and such clothier, hotpresser, or other person shall untie and open every ream or half ream or parcel of such glazed paper or press paper in the presence of such officer, who shall examine and take an account thereof, and shall cancel or destroy the labels on such covers or wrappers, and the several impressions of the duty stamp thereon; and when any quantity of such glazed paper or press paper shall have become unfit for use, and such clothier, hotpresser, or other person shall be desirous of obtaining payment of the allowance of duty thereon, such clothier, hotpresser, or other person shall give to the proper officer of Excise forty-eight hours' notice in writing, specifying a day and hour when all such glazed paper or pressed paper so become unfit for further use will be produced to him, and on the attendance of the officer all such last-mentioned glazed paper or press

paper shall be produced to and shown to such officer, who shall thereupon proceed to examine and take an account of the same, and shall with scales and weights, to be provided by such clothier, hotpresser, or other person, weigh all such glazed paper or press paper so produced to him, and take an account thereof, and shall then cause all such paper to be burned in his presence; and all such paper having been burned, such officer shall give to the clothier, hotpresser, or other person who shall have produced the same a certificate in writing, specifying the quantity by weight of glazed paper or press paper produced to and taken account of by him, and that the same has been duly burned in his presence; and such clothier, hotpresser, or other person, or his principal workman or servant, shall, at the foot or on the back of such certificate, make and subscribe, in the presence of the collector or other officer of Excise authorized or directed by the commissioners of Excise to receive the same, a declaration in writing setting forth that all the glazed paper or press paper specified in such certificate hath been actually and *bonâ fide* used and employed in the pressing of woollen cloths, and for no other purpose whatsoever; and such collector shall thereupon pay to the person entitled to receive the same the amount of allowance due and payable to him according to such certificate: Provided always, that no claim to any such allowance, or any payment thereof, shall be made oftener than twice in each year."

Persons intending to export paper, &c. on drawback to give a packing notice.

Sect. 52. "That every person intending to export any paper, or any button-board, mill-board, paste-board, or scale-board, or any books, as merchandize, and to obtain the drawback thereon, shall give twelve hours' notice of his intention to the officer of Excise who shall be appointed by the commissioners of Excise for that purpose, specifying in such notice the time and place when and where and the person on whose account such paper, button-board, mill-board, paste-board, or scale-board, or books, is or are intended to be packed; and such notice having been given, an officer of Excise shall attend at the time and place specified, and all the paper, button-board, mill-board, paste-board, or scale-board, or books, intended to be exported, shall be produced to him, and in the case of paper (except paper printed, painted, or stained, or cut and gilded, as hereinafter mentioned), button-board, mill-board, paste-board, or scale-board, the same shall be produced in the original wrappers in which the same was charged with duty, with the labels, having printed or written, marked and stamped thereon, the several particulars required by this act; and such officer shall examine the same, and shall cancel, obliterate, or destroy every such label, and the impressions of the duty stamp on each ream, half ream, or parcel; and such officer shall weigh and take an account of all such paper, button-board, mill-board, paste-board, or scale-board, or books, as shall be produced to him, or, in the case of paper printed, painted, or stained, shall measure and take an account of the number of square yards thereof; and all such paper, button-board, mill-board, paste-board, or scale-board, or books, shall be packed in the presence of the officer of Excise, and the packages containing the same shall be marked with the true weight thereof in the presence of such officer, and shall be secured with such fastenings, and sealed with such seals or marks, by such officer, as the commissioners of Excise shall direct; and every such officer shall make out an account of the quantities and kinds and weight, or, in the case of paper printed, painted, or stained, of the number of square yards, of all such paper, button-board, mill-board, paste-board, or scale-board, or books, as shall be produced to him and be packed in his presence, and shall make a return thereof to the export officer of Excise, or officer acting as export officer, at the port of exportation: Provided always, that if the person giving such packing notice shall not begin and proceed to pack up all such paper, button-board, mill-board, paste-board, or scale-board, or books, at the time mentioned therein,

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Penalty on putting any heavy substance or other matter in boxes, &c. containing paper, &c. packed for exportation.

such notice shall be null and void, and a like fresh notice shall be required before the packing up the same or any part thereof."

Sect. 53. "That if any person shall put or place any heavy substance, or other matter than paper, button-board, mill-board, paste-board, or scale-board, or books, except the materials necessarily used in packing the same, in any cask, box, chest, or package containing paper, button-board, mill-board, paste-board, or scale-board, or books, packing or packed for exportation, or shall pack in any cask, box, chest, or package any other paper, button-board, mill-board, paste-board, or scale-board, or books, or other substance or article (except as aforesaid), than the paper, button-board, mill-board, paste-board, or scale-board, or books, produced to the officer as to be packed and exported, or shall, by any art, contrivance, or device, prevent, hinder, or deceive any officer of Excise from or in taking a true account of the kind or weight (or, in the case of paper printed, painted, or stained, the measure) of the paper, button-board, mill-board, paste-board, or scale-board, or books, packed or produced to be packed, such person shall forfeit two hundred pounds, and every such cask, box, chest, or package, with the contents thereof, shall be forfeited."

Boxes, &c. packed for exportation not to be opened.

Sect. 54. "That every person who shall open any cask, box, chest, or package containing paper, button-board, mill-board, paste-board, or scale-board, or books, which shall have been packed for exportation, or shall wilfully destroy or deface any seal or mark of the officer placed thereon, or damage any of the fastenings thereof, and every person who shall cut out, erase, obliterate, alter, or damage any figure, letter, or mark cut, written, painted, branded, or made on any cask, box, chest, or package containing paper, button-board, mill-board, paste-board, or scale-board, or any books for exportation, expressing or denoting the weight of such cask, box, chest, or package, or the weight of the paper, button-board, mill-board, paste-board, or scale-board, or books therein, or the number thereof, shall forfeit one hundred pounds, and every such cask, box, chest, or package, with the contents thereof, shall be forfeited, and may be seized by any officer of Excise or Customs."

Penalty, 100*l.*

Exporters to give a shipping notice and enter into security.

Sect. 55. "That every person intending to export any paper, button-board, mill-board, paste-board, or scale-board, or any books, on drawback, shall, by himself or his agent, give to the export officer of Excise, or officer acting as such, at the port of exportation, a notice in writing of his intention to ship such paper, button-board, mill-board, paste-board, or scale-board, or books, six hours at least before such shipment shall be made, in which notice shall be specified the number of packages to be shipped, with the respective marks and numbers thereon, and the quantity, weight, and kinds of paper, button-board, mill-board, paste-board, or scale-board, or books, in each package, with the amount of the drawback claimed thereon, and the value of the same for home consumption, and shall also specify the quay or place where the packages are then lying, and from which the same are to be shipped, and the time of shipment, with the name of the ship and the master thereof, and the place or port to which such paper, button-board, mill-board, paste-board, or scale-board, or books, is or are to be exported (*a*); and the person so intending to export such paper, button-board, mill-board, paste-board, or scale-board, or books, shall also, by himself or his agent, make a declaration before the export officer of Excise, or officer acting as such as aforesaid, that such packages, and the paper, button-board, mill-board, paste-board, or scale-board, or books, contained therein, are the same described and set forth in the account or certificate of the packing officer, and that to the best of his knowledge and belief the full duties of Excise have been charged and secured on such paper, button-

(*a*) As to what constitutes exportation, see *Williams* v. *Marshall*, 6 *Taunt.* 390; and 7 *Taunt.* 468, *S. C.*

2 & 3 Vict. c. 23.

board, mill-board, paste-board, or scale-board, or on the paper on which such books shall have been printed or ruled, and shall also give bond, with one or more sufficient surety or sureties, to be approved of by the officer appointed by the commissioners of Excise to take such bond, in double the value of the drawback, conditioned that such packages, with the paper, button-board, mill-board, paste-board, or scale-board, or books therein, shall with all convenient speed be shipped and exported, and shall not be unpacked in any port or harbour of the United Kingdom, nor unloaded, unshipped, or relanded, or put on board any other ship or vessel, in any part of the United Kingdom, shipwreck or other unavoidable accident excepted; and such notice having been given and such declaration made as aforesaid, and such security entered into, the officer of Excise receiving the same shall write his name upon the said shipping notice as a certificate of the requisites aforesaid having been complied with, and shall forward and transmit the said notice, with his name thereon, to the proper officer of Customs at the port whose duty it may be to attend the shipping of such goods."

Packages to be produced to officer of Customs, who shall see them shipped in his pre-

Sect. 56. "That all the said packages, with the paper, button-board, mill-board, paste-board, or scale-board, or books therein, shall, at the time specified in the notice for shipping the same, be produced to the proper officer of Customs, who shall inspect and examine the same, and, being satisfied that they are the packages specified in the shipping notice, shall see them shipped in his presence, and certify such shipment on the shipping notice, and return the same to the export officer of Excise, or officer acting as such, and such export officer, having received back the said notice, with the certificate of shipment thereon, shall deliver to the exporter or his agent a debenture, in such form and with such particulars thereon, as the commissioners of Excise shall direct, for payment of the amount of drawback at the expiration of six weeks from the time of shipment."

Certificate of due landing of goods exported to Guernsey and Jersey.

Sect. 57. "That no debenture shall be made out for the payment of drawback on any paper, button-board, mill-board, paste-board, or scale-board, or books, exported to Guernsey, Jersey, Alderney, or the Isle of Man, until a certificate shall be produced of the due landing thereof under the hand of the chief officer of Customs of the said islands respectively."

Officers of Customs and Excise may open and examine packages.

Sect. 58. "That in every case where any such notice for shipping any paper, button-board, mill-board, paste-board, or scale-board, or any books, on drawback, shall be given, it shall be lawful for the officer of Customs to whom the package or packages containing such paper, button-board, mill-board, paste-board, or scale-board, or books, shall be produced for shipment, and for any other officer of Customs or of Excise, to open all or any of the packages mentioned in such notice, and to unpack and examine the contents thereof; and if the same shall be found correct, such officer shall, at his own expence, to be allowed him by the commissioners of Customs or of Excise, as the case may be, cause the same to be carefully repacked, and the respective packages again secured and sealed; but if on such examination any package, or the contents thereof, shall be found to vary in any particular from the description contained in the shipping notice, so that a higher or greater sum than of right due shall have been claimed, or in case such discovery had not been made would have, on the exportation of such paper, button-board, mill-board, paste-board, or scale-board, or books, been deemed payable as drawback, or her Majesty in any respect defrauded therein, such packages, and the contents thereof, shall be forfeited, and may be seized by any officer of Excise or Customs, and the exporter thereof shall forfeit treble the value of the drawback sought to be obtained, or two hundred pounds, at the election of the commissioners of Excise."

Drawback not to be allowed on books in Latin, &c. languages, nor on

Sect. 59. "That no drawback shall be allowed for or in respect of the paper of any books in the Latin, Greek, Oriental, or Northern Languages printed within the Universities of Oxford and Cambridge, or the

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2 & 3 Vict. c. 23.

Bibles, &c., nor other books exported by persons not being printers, &c.

Universities of Scotland, or Trinity College, Dublin, by permission of the vice-chancellors or principals or provost of the same respectively, nor for or in respect of any Bibles, Testaments, Psalm Books, or Books of Common Prayer, Confession of Faith, or larger or shorter Catechism, printed in the Universities of Oxford or Cambridge, or Trinity College, Dublin, or by the Queen's printers in England, Scotland, or Ireland respectively, nor for or in respect of any other printed books exported by any person not being a printer or bookseller or stationer, or which have ever been before sold to any person not using or exercising the trade or business of a printer or bookseller or stationer."

None but stationers to export account books on drawback.

Sect. 60. "That no drawback shall be allowed on any ruled account books which shall be exported by any other person than a stationer, nor on any such books which shall have been before sold to any person not using or exercising the trade or business of a stationer."

Regulations for exporting paper cut, gilded, or otherwise prepared.

Sect. 61, reciting that it is expedient to make regulations for allowing paper to be cut and gilded or coloured or otherwise prepared previous to exportation, enacts, "That when any stationer shall intend to plough, cut, gild, colour, or otherwise prepare any paper previously to the exportation thereof on drawback, such stationer shall give to the proper officer of Excise notice in writing of such his intention, specifying in such notice the quantity of paper so intended to be prepared and exported, and a day and hour and place when and where the same will be produced to such officer; and thereupon such officer shall attend at the time and place mentioned in such notice, and such stationer shall produce to such officer all the paper specified in such notice enclosed in the wrappers in which the same was charged with duty, with the labels attached thereto, and the several particulars required on such labels remaining thereon; and such stationer shall provide sufficient scales and weights, and shall permit and assist such officer to weigh and take an account of all such paper, from which such officer shall also take a sample or samples, if such paper shall be of more than one kind or description; and such officer shall also write upon the labels of every ream or half ream, the particulars that such paper is to be ploughed, cut, gilded, coloured, or otherwise prepared as the case may be, and sign his name thereto; and such account and sample or samples having been taken, such paper shall be left in the custody and possession of the stationer to be ploughed, cut, gilded, coloured, or otherwise prepared, and when the same shall be prepared and ready to be packed for exportation, such stationer shall give to the officer of Excise a packing notice as hereinbefore directed; and such paper shall at the time of packing be produced to the packing officer in the same original wrappers in which the same was charged with duty, and produced to the officer for taking the first account thereof, with the memoranda of the officer written thereon; and no paper so prepared shall be allowed to be packed for exportation on drawback which shall not be produced in wrappers having the labels thereof so marked by the officer as aforesaid."

Penalty on fraudulently obtaining or endeavouring to obtain drawbacks.

Sect. 62. "That every person who shall produce to any officer of Excise or Customs to be packed or shipped for exportation on drawback any paper, button-board, mill-board, paste-board, or scale-board, or any books, not entitled to drawback under the provisions of this act, or who shall pack or ship for exportation any such paper, button-board, mill-board, paste-board, or scale-board, or books, or any articles, matters, or goods, other than the paper, button-board, mill-board, paste-board, or scale-board, or books, produced to the officer of Excise to be packed, or who shall fraudulently remove, deposit, or conceal any paper, button-board, mill-board, paste-board, or scale-board, or books, with intent unduly to obtain any drawback, or any higher amount of drawback than he would otherwise be entitled to, shall, over and above all other penalties which he may thereby incur, forfeit treble the amount of the drawback sought to be obtained, or two hundred pounds, at the election of the commissioners of Excise, and all such paper, button-board, mill-

board, paste-board, and scale-board, or books, or other articles, matters, or goods, shall be forfeited, and may be seized by any officer of Excise or Customs."

(10). *Paper.*

2 & 3 Vict. c. 23.

Allowance of duty on paper lost by fire or wreck.

Sect. 63. "That if any paper, button-board, mill-board, paste-board, or scale-board, shall, by fire or by the sinking, casting away of, or by any inevitable accident happening to any vessel or barge in which such paper, button-board, mill-board, paste-board, or scale-board shall be transporting or have been transported from any part of the United Kingdom to any other part thereof, or on board of which such paper, button-board, mill-board, paste-board, or scale-board shall have been put for that purpose, be wholly lost or destroyed, or so far damaged as to be worthless and only fit to be wholly destroyed, and no longer capable of use as paper, button-board, mill-board, paste-board, or scale-board, unless re-manufactured and re-charged with duty, it shall be lawful for the maker of such paper, button-board, mill-board, paste-board, or scale-board, being at the time of such loss or damage the proprietor or owner thereof, to make proof of such loss or damage, and of the cause thereof, on the oath or oaths of one or more credible witness or witnesses, and of the duty on such paper, button-board, mill-board, paste-board, or scale-board having been duly charged on and paid by such maker, and that he was at the time of such loss or damage the proprietor or owner thereof, before the justices of the peace at the quarter sessions for the county, shire, division, city, town, or place where such paper, button-board, mill-board, paste-board, or scale-board shall have been made and charged with duty, or at or next adjoining to the place where such accident shall have taken place, or shall have been first discovered or made known to such maker, or before the commissioners of Excise, or any three of them, if such paper, button-board, mill-board, paste-board, or scale-board shall have been made or charged with duty, or such accident shall have happened or been first discovered or made known to such maker, within the limits of the chief office of Excise; and such justices at quarter sessions and commissioners of Excise respectively shall and they are hereby required to examine any witness or witnesses thereupon upon oath (which oath they are hereby authorized to administer), and upon satisfactory proof being made before them respectively that such paper, button-board, mill-board, paste-board, or scale-board had been so wholly lost and destroyed, or so far damaged as aforesaid, by any of the causes respectively aforesaid, and that the duties thereon had been duly charged and paid, and that such maker was the proprietor or owner thereof at the time of such loss or damage, to grant a certificate thereof, and of the amount of such duties, under their respective hands; and upon the production of such certificate to the collector of Excise or other officer acting as collector of Excise of the collection in which such paper, button-board, mill-board, paste-board, or scale-board shall have been charged with duty, such collector or other officer shall and he is hereby authorized and required to pay or allow to such maker, out of any monies arising from the duties of Excise in his hands, so much money as the sum specified in such certificate for such duties as aforesaid shall amount to."

Conditions on which allowance is to be obtained.

Sect. 64 provides and enacts, "That no paper maker shall be entitled to any such relief as aforesaid unless a notice in writing, describing the nature, cause, and extent of such accident, and the place where the same shall have occurred, shall be delivered to the commissioners of Excise, or to the supervisor of Excise of the district in which such loss or damage shall have taken place or shall have been first discovered, within fourteen days next after the same shall have come to the knowledge of the paper maker claiming such relief, nor unless such paper maker or his agent shall also give or leave notice in writing of his intention to apply for such relief to or with the collector or supervisor of the collection or district where the quarter sessions are to be held at which he intends to apply for such relief, or to the solicitor of Excise

(10). *Paper.*

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for England when such application shall be intended to be made to the commissioners of Excise, ten days at least before the commencement of such quarter sessions or before such application to the said commissioners, nor unless such paper maker shall apply for such relief within four calendar months after such loss or damage shall have come to his knowledge."

Explanation of terms in t is act.

Sect. 65. "That the term 'paper' in this act shall include and be deemed to include, except where otherwise expressed, glazed paper, sheathing paper, button paper, and every kind of paper whatsoever, by whatever denomination known or called, save and except that nothing in this act contained shall extend or be deemed to extend to authorize the allowance or payment of any drawback on the exportation of glazed paper; and that the term 'paper maker' shall, except where otherwise particularly expressed, include and be deemed and taken to include every maker of paper, button-board, mill-board, paste-board, and scale-board, and several in partnership as well as one person, and females as well as males; and the term 'paper mill' shall, except where otherwise particularly expressed, include and be deemed and taken to include every mill, house, premises, room, or manufactory in which any paper, button-board, mill-board, paste-board, or scale-board shall be made or manufactured."

All paper, &c. to be included in this act.

Sect. 66. "That all paper, button-board, mill-board, paste-board, and scale-board, of whatever materials made, and by whatever denomination known or called, and however manufactured, whether made by the materials being reduced to pulp and moulded or finished by machinery, or by being pressed or intermixed in a dry state, and made to adhere by pressure or otherwise, shall be deemed and taken to be paper, button-board, mill-board, paste-board, and scale-board within the meaning of this act, and shall be charged with duty accordingly; and the makers thereof shall be and are hereby declared to be subject and liable to all the enactments, rules, regulations, fines, penalties, and forfeitures of this act, and of the general laws for securing the duties of Excise."

Repeal of acts.

Sect. 67. "That from and after the commencement of this act the several acts and parts of acts following shall be and the same are hereby repealed; (that is to say), so much of the 10 Anne, c. 19, as relates to the duties, allowances, or drawbacks on paper, button-board, mill-board, paste-board, or scale-board, or the collecting or securing the same; the 21 Geo. III. c. 24; the 24 Geo. III. sess. 2, c. 18; the 34 Geo. III. c. 20; the 41 Geo. III. c. 8; the 42 Geo. III. c. 94; the 44 Geo. III. c. 106; the 54 Geo. III. c. 153; the 56 Geo. III. c. 103; the 56 Geo. III. c. 78; the 1 Geo. IV. c. 58; so much of the 5 Geo. IV. c. 55, as relates to the duties, allowances, and drawbacks on paper, button-board, mill-board, scale-board, and paste-board, or the collecting or securing the same; so much of the 6 & 7 Will. 4, c. 52, as relates to the duties on paper, button-board, mill-board, paste-board, and scale-board, and the collecting and securing the same; save and except so far as any of the said recited acts repeal any former acts or parts of acts, and also save as to any duties or arrears of duties, or any drawbacks or allowances, due or owing or payable, or any penalties, fines, or forfeitures incurred, under the said recited acts, or parts of acts, or any of them, before the commencement of this act, all which said duties, drawbacks, and allowances, penalties, fines, and forfeitures may be demanded, recovered, and paid, sued for, enforced, and recovered, and condemned, as if this act had not been passed."

Commencement of act.

Sect. 68. "That this act shall commence and take effect on the eleventh day of October, 1839."

(11). *Passage Vessels.*

(11). Passage Vessels.

[9 Geo. IV. c. 47; 4 & 5 Will. IV. c. 75, s. 10.]

By the 9 Geo. IV. c. 47, intituled "*An Act for regulating the retail of exciseable articles and commodities to passengers on board of passage*

vessels, from one part to another of the United Kingdom," (15th July, 1828), after reciting that many packets, boats, and other vessels are employed for the carriage and conveyances of passengers from one part of the United Kingdom to another part thereof, and it would greatly tend to the convenience and accommodation of such passengers, if the master or commander or other person of or belonging to such vessels were by law authorized to provide for and to retail and sell to such passengers foreign wine, strong beer, cyder, perry, spirituous liquors, and tobacco, to be consumed by such passengers in and on board of such vessels during the voyage, it is enacted, "That from and after the fifth day of July, 1828, it shall be lawful for the commissioners of Excise in England, and for the commissioner or commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, at any time to grant a licence to any master or commander of any packet, boat, or other vessel employed for the carriage and conveyance of passengers from one part of the United Kingdom to another or other parts thereof, or to any other person belonging to any such packet, boat, or vessel, who shall be nominated and approved of by the owner or owners, or director or directors thereof, residing in England, Scotland, or Ireland respectively, such nomination and approval being signified by their writing and subscribing a certificate or declaration, to be delivered by them to the commissioners or assistant commissioners of Excise of that part of the United Kingdom in which the owner or owners, director or directors reside, or to such person as such commissioners in England, or such commissioner or commissioners and assistant commissioners in Scotland and Ireland respectively, shall respectively appoint for that purpose, to provide for and to supply, retail, and sell to the passengers on board such vessel, to be consumed by them in and on board thereof during the voyage on which such passengers shall be then conveyed, foreign wine, strong beer, cyder, perry, spirituous liquors, and tobacco; and that such licence shall continue in force until the fifth day of July next ensuing the date thereof: and such licence shall be transferrable, by an indorsement thereon of such transfer, subscribed by the person to whom and in whose name the same shall have been granted, his executors or administrators, or by any assignee thereof, his executors or administrators, to any other master or commander, or any other person of or belonging to the said vessel, or in case of the loss or breaking up of any such vessel before the expiration of any such licence, to the master, commander, or any other person of or belonging to any other vessel of the same owner or owners, or company or companies, substituted in lieu of the said vessel in respect of which such licence was granted, and nominated and approved of by the owner or owners of such vessels, or the director or directors of such company or companies, such nomination, approval, and transfer being signified by the subscription of such owner or owners as aforesaid, or their executors, administrators, or assigns, or of such director or directors, to such indorsement; and that every such licence shall from year to year be renewed before the expiration of the licence granted for the preceding year, and shall fully authorize and empower the person therein named, or his assignee, to supply, retail, and sell foreign wine, beer, cyder, perry, spirituous liquors, and tobacco, or any of them, to be consumed in and on board of such vessel by the passengers thereof, during any voyage on which such passengers shall be carried and conveyed while such licence shall continue in force: anything in any act or acts in force immediately before the passing of this act to the contrary notwithstanding."

(11). *Passage Vessels.*

9 Geo. 4, c. 47.

Commander, &c. of vessels and packets carrying passengers from one part of United Kingdom to another, may be licensed by commissioners of Excise to retail wine, beer, tobacco, &c. on board such vessels.

Licences to be transferrable,

and to be renewed yearly

Sect. 2. "That at the time of granting such licence as aforesaid, the owner or owners, director or directors of such packet, boat, or other vessel, in respect of which such licence is applied for as aforesaid, shall pay or cause to be paid to the commissioners of Excise in England, or commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland, to whom such application shall be made, according to the residence of such owner or owners, or director or directors as

Duty on licence.

(11). *Passage Vessels.*

aforesaid, or to the collector of Excise or other person appointed as aforesaid to grant the same, a duty of one pound" (*a*).

9 Geo. 4, c. 47.

Penalty for selling wines without licence, &c.

Sect. 3. "That if any person shall retail or sell, on board any packet, boat, or other vessel employed for the carriage or conveyance of passengers from one part of the United Kingdom to another part thereof, any foreign wine, strong beer, cyder, perry, spirituous liquors, or tobacco, without having taken out such licence as is by this act required, every such person shall for every such offence incur and be liable to a penalty of ten pounds" (*b*).

Duties to be under the Excise.

Sect. 4. "That the duties by this act imposed shall be under the management of the commissioners of Excise."

Monies arising by duties to be carried to the consolidated fund.

Sect. 5. "That all the monies arising by the duties by this act imposed (the charges for raising and accounting for the same excepted) shall from time to time be paid and carried to and made part of the consolidated fund of the United Kingdom of Great Britain and Ireland, in like manner with other duties of excise arising from licences."

Not to affect any regulations or penalties respecting smuggling.

Sect. 6. "That nothing in this act contained shall extend or be construed to extend to repeal any regulation, penalty or forfeiture contained in or imposed by any law or laws in force at the time of passing this act, for or in respect of any person carrying, removing, hiding, concealing, or landing any spirits, or any other goods or commodities on which the duties of Excise chargeable and payable thereon have not been fully paid, or for or in respect of any vessel used or employed for that purpose; but that all such regulations, penalties, and forfeitures shall remain in full force and virtue, this act, or any licence granted by authority thereof, in anywise notwithstanding."

Licences under 9 Geo. 4, c. 47, for sale of exciseable commodities on board passage vessels may be granted by commissioners of Excise, or their authorized officer.

But, by the 4 & 5 Will. IV. c. 75, s. 10, reciting the 9 Geo. IV. c. 47, and that by an omission in the said act no power is given to any officer of Excise, or any other persons than the commissioners of Excise, to grant licences thereby authorized to be granted, whereby great inconvenience and delay is occasioned to persons desirous of obtaining such licences; for remedy whereof enacts, "That all licences to be granted under the said act, or any other act relating to the revenue of Excise, may be granted by the commissioners of Excise, or by any officer or officers of Excise who shall be authorized by the commissioners of Excise to grant the same, and all licences granted by any officer or officers so authorized shall be good, valid, and effectual; anything in any act contained to the contrary notwithstanding."

PERRY, see "*Cyder.*"

(12). *Plate.*

(12). PLATE (*c*).

[31 Geo. II. c. 32; 32 Geo. II. c. 24; 43 Geo. III. cc. 68, 69; 53 Geo. III. c. 103; 55 Geo. III. c. 30; 59 Geo. III. c. 32; 1 Geo. IV. cc. 14, 32; 3 Geo. IV. c. 27; 6 Geo. IV. cc. 81, 111, 118; 9 Geo. IV. c. 49.]

Licence.

We have seen that the General Licensing Act, 6 Geo. IV. c. 81, s. 35, which repeals all prior acts relating to licences, expressly excepts licences to persons trading in, vending, or selling gold and silver plate in Great Britain and Ireland; *ante*, p. 659.

By the 31 Geo. II. c. 32, ss. 2, 3, each person trading in, selling, or vending gold or silver plate, is compellable to take out a licence.

(*a*) This is of course affected by the 3 Vict. c. 17, which imposes an additional duty of £5 per cent.

(*b*) By the 5 & 6 Vict. c. 44, s. 5, no wines, &c. shall be sold by retail on board of any boat, &c. which shall be moored, or lying at anchor within the Metropolitan police district, during the times when prohibited to be sold in public-houses.

(*c*) The 6 Geo. IV. c. 118, s. 2, places the duties on *licences* for trading in, vending, or selling any gold or silver plate, under the management of the *commissioners of stamps*, and they are to be deemed and taken to be stamp duties. However, it is deemed expedient to retain this head of revenue in this place.

And by the 43 Geo. III. c. 69, *sch.* (A.), every person *trading in, vending, or selling* (c) any gold or silver plate, or any goods in which any quantity of gold exceeding two pennyweights, and under two ounces in weight, or any quantity of silver exceeding five pennyweights and under thirty ounces weight, in one distinct ware, is manufactured, shall pay for every such licence . . . . £ 2 s. 6 d. 0

And by the 55 Geo. III. c. 30, an additional sum of . . 2 6 0

But, by the 59 Geo. III. c. 32, s. 2, "From and after the passing of this act, no person trading in, vending, or selling silver or gold watches, and who shall not trade in, vend, or sell, or offer or expose to sale, any other gold or silver plate, or any other goods or wares in which any quantity of gold exceeding two pennyweights and under two ounces in weight, or any quantity of silver exceeding five pennyweights and under thirty ounces in weight, in any one separate and distinct ware or piece of goods, is or are or shall be manufactured, shall be required or liable to pay for or upon any such licence as aforesaid the said sum of 2*l.* 6*s.* by the said recited act granted and imposed, any thing in the said recited act or this act to the contrary thereof notwithstanding."

Persons selling silver or gold watches, in which are contained a certain quantity of those metals, not liable to licence duty of 2*l.* 6*s.* granted by recited act.

Sect. 3. "That all goods, wares, and merchandise which shall be sold or offered for sale, or taken in pawn, or delivered out as and for gold or silver respectively, shall be deemed and taken to be gold or silver respectively within the intent and meaning of the said recited act of the fifty-fifth year aforesaid, and of this act, and also of an act made in the forty-third year of his present Majesty's reign, for repealing the duties of Excise payable in Great Britain, and granting other duties in lieu thereof, and of all other acts now or which shall hereafter be in force relating to his Majesty's revenue of Excise."

Gold or silver goods offered for sale, &c. to be deemed such, according to 55 Geo. 3, c. 30, and 43 Geo. 3, c. 69.

And by the 43 Geo. III. c. 69, *sch.* (A.), every person trading in, vending, or selling any gold or silver plate, or any goods in which any quantity of gold of the weight of two ounces or upwards, or any quantity of silver of the weight of thirty ounces or upwards, in one distinct ware, is manufactured; and every pawnbroker trading in, vending, or selling gold or silver plate, or goods or wares in which any quantity of gold or silver is manufactured, or taken in or delivering out pawns of such plate, goods, or wares; and every refiner, £ s. d. for every such licence 5 15 0

And by the 55 Geo. III. c. 30, an additional sum of (b) . . 5 15 0

By the 43 Geo. III. c. 69, these duties were imposed without limitation of time; those by the 55 Geo. III. c. 30, were granted till 5th April, 1819, but 3 Geo. IV. c. 27, extended them to 5th July, 1826; and see 9 Geo. IV. c. 49, *post*, p. 868.

By the 31 Geo. II. c. 32, s. 4, and 32 Geo. II. c. 24, s. 3, the said licences are to be renewed annually ten days before the end of the year, on pain of forfeiting 20*l.*

But, by the 31 Geo. II. c. 32, s. 7, persons in partnership, carrying on their trade in one house or shop only, shall not be obliged to take out more than one licence for one year.

In copartnerships, where trade carried on in one house only, one licence sufficient.

(a) The stat. 43 Geo. III. c. 69, described the persons who are to take out licences as persons using the trade of selling gold or silver plate, or any goods or wares composed of gold or silver, or in which any gold or silver shall be manufactured, and persons employed to sell any gold or silver plate, or any such goods or wares as aforesaid, at any auction or public sale, or by commission: but a person who sold one piece of old plate to an innkeeper, at a price set upon it by a silversmith, as what it was worth for use, was held not to be liable to a penalty for selling plate without taking out a licence, this being only a singular and isolated instance; (*The King* v. *Buckle*, 4 *East*, 346); and as to what is to be considered as a *dealing*, see *Johnson* v. *Hudson*, 11 *East*, 180; *the King* v. *the Commissioners of Excise*, 2 *T. R.* 386, &c.; *Rex* v. *Little*, 1 *Burr.* 609; *Paley on Conv.* 71; *Boscawen*, 130.

(b) Affected also by the 3 Vict. c. 17, as to the additional 5*l.* per cent.

(12). *Plate.*

Executors &c. of persons having licences may carry on trade till licences expire.

By the 53 Geo. III. c. 103, "That, upon the death of any person or persons so licensed, or upon the removal of any person or persons so licensed from the house or premises in which such his, her, or their licence shall authorize him, her, or them to make or manufacture, trade, deal in, vend, or sell any of the commodities aforesaid, it shall and may be lawful to and for the commissioners of Excise in England and Scotland respectively for the time being, or any one or more of them, and to and for the several collectors and supervisors of Excise in England and Scotland respectively within their respective collections and districts, to authorize and empower the executors, administrators, or the wife or child of such deceased person, or the assignee or assigns of such person or persons so removing, who shall be possessed of such house or premises, in like manner to make or manufacture, trade, deal in, vend, or sell the several sorts of commodities mentioned in such licence in the same house or premises where such person or persons so licensed by virtue of such licence carried on such trade, during the residue of the term for which such licence was originally granted, without taking out a new licence during the residue of the said term."

Traders in or venders of small gold and silver wares exempted from taking out licence.

By the 32 Geo. II. c. 24, s. 1, no person shall be liable to take out any licence for trading in, vending, or selling any quantity of gold not exceeding two pennyweights, or of silver not exceeding five pennyweights, in any one separate and distinct ware or piece of goods.

Persons deemed traders in and venders of plate within the act, and liable to take out licences.

By the 31 Geo. II. c. 32, s. 6, all persons using the trade of selling gold or silver plate, or any goods, or wares composed of gold or silver, or in which any gold or silver shall be manufactured, and also all persons employed to sell any gold or silver plate, or any such goods or wares aforesaid, at any auction or public sale, shall respectively be deemed traders in, sellers, or venders of gold or silver plate, and shall take out a licence for the same.

Pawnbrokers and refiners deemed traders in and venders of gold and silver wares, &c.

By the 32 Geo. II. c. 24, s. 4, no pawnbroker shall (either publicly or privately) trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, nor shall any person use the trade of a refiner of gold or silver, without taking out and renewing yearly such a licence.

Sect. 4. And every such pawnbroker and refiner shall be deemed to use the trade of selling or vending gold or silver plate.

Penalty, 20*l.*

Sect. 4. If any pawnbroker shall trade in or sell any gold or silver plate, or any goods or wares in which any gold or silver shall be manufactured, or shall practise the business of a refiner, without such licence, or shall not have renewed the same yearly, and made such payment as aforesaid, he shall forfeit 20*l.*

Licence to serve for the house, &c. only for which it was granted.

By the 31 Geo. II. c. 32, s. 7, no licence shall authorize any person to whom the same may be granted, and who shall sell such gold or silver plate in shops, to trade in or sell such gold or silver plate in any other shop or place, except in such houses or places thereunto belonging, wherein he shall inhabit and dwell at the time of granting such licence, or in booths or stalls at fairs or markets.

Prosecutions for recovery of penalties, when and how to be heard.

Sect. 11. Prosecutions for offences may be in the courts at Westminster, or otherwise: if within the limits of the chief office of Excise in London, the same may be before three commissioners of Excise; and, in case of appeal, before the commissioners of appeal; and elsewhere, before two justices residing near to the place where the offence was committed: and if either informants or defendants shall think themselves aggrieved by the judgment of such justices, it shall be lawful for them to appeal to the next quarter sessions, who shall hear and determine the same, and whose judgment shall be final. See 7 & 8 Geo. IV. c. 53, *ante*, p. 683 *et seq.*

Summoning offenders; and proceeding to examination of matter of fact, and giving

Sect. 11. The said commissioners of Excise and commissioners for appeals (in case of appeal) and justices respectively shall, upon complaint or information on oath, summon the party accused; and upon his appearance or contempt shall proceed to the examination of the fact; and

on due proof made thereof by confession or oath of one witness shall give judgment, and issue warrants under their hands for levying the penalties by distress, and to cause sale of the goods levied upon (if not redeemed in fourteen days), and for want of sufficient distress shall imprison the offender till satisfaction be made.

judgment, and awarding execution thereupon, and for want of distress, to commit party.

By the 32 Geo. II. c. 24, s. 8, they may mitigate the said penalty of 20*l.* as by the laws of Excise.

Mitigation of penalties.

Sect. 12. All forfeitures (the necessary charges for the recovery thereof being first deducted) shall be distributed half to the king, and half to him who shall inform or sue.

Application of penalties.

6 Geo. 4, c. 118.

By the 6 Geo. IV. c. 118, s. 2. "That from and after the said 5th day of July, 1825, the duties and sums of money granted and made payable by any act or acts now in force upon or in respect of licences to persons trading in, vending, or selling in Great Britain any gold or silver plate, and also upon or in respect of licences to pawnbrokers trading in, vending, or selling gold and silver plate, or taking in or delivering out pawns of such plate, and also the duty upon or in respect of licences to refiners of gold or silver in Great Britain, shall continue in force, and shall be paid and payable to and shall be under the management of the commissioners of the stamps in Great Britain for the time being, and shall be denominated and be deemed and taken to be stamp duties."

Duties on licences to sell gold or silver plate, and on pawnbrokers and refiners, put under commissioners of stamps.

Sect. 3. "That all goods or wares which shall be sold or offered for sale, or taken in pawn, or delivered out as and for gold or silver respectively in any part of Great Britain, shall be deemed and taken to be gold or silver respectively within the intent and meaning of this act, or any other act or acts. Provided always, that gold or silver lace, or gold or silver wire, thread, or fringe, shall not be deemed gold or silver plate within the meaning of this act or any other act or acts, and that it shall not be necessary for any person or persons trading in or selling or vending gold and silver lace or gold or silver wire, and thread, or fringe, in Great Britain, to take out any licence for trading in or selling gold or silver plate in Great Britain."

Gold or silver offered for sale &c. deemed such.

Gold or silver lace not deemed plate.

Sect. 4. "That all and singular the powers and authorities, rules, regulations, and directions in anywise relating to the said duties upon gold and silver plate, or to the granting any such licences as aforesaid, or to the duties upon or in respect of all or any of such licences respectively contained in the said hereinbefore recited acts or any of them, or in any other act or acts relating to such duties or licences respectively in force on or immediately before the passing of this act (except so far as the same shall be inconsistent with the express provisions of this act), shall be used, executed, exercised, and put in force for the securing and collecting of any such duties as aforesaid, and for the granting of any such licences respectively by the commissioners of stamps in Great Britain and Ireland respectively, as fully and effectually to all intents and purposes as if all and singular such powers and authorities, rules, regulations, and directions had been originally given and granted to such commissioners of stamp duties respectively, and as if the same were repeated and re-enacted in this act; and it shall be lawful for such commissioners of stamps respectively to grant all such licences, and to manage all such duties respectively, in like manner as the commissioners of Excise respectively might have done before the said 5th day of July, 1825, under and by virtue of any of the said acts; and that all fines, penalties, and forfeitures imposed by any such act or acts in respect of any matter or thing to be done, or refused or neglected to be done, by any person or persons in anywise relating to such duties or any of them respectively, shall be incurred and forfeited, and shall and may be sued for, recovered, levied, mitigated, and applied upon or in respect of the doing or neglecting or refusing to do any acts, matters, or things relating to the said duties and licences respectively, by this act placed under the management of the said commissioners of stamps."

Powers of former acts transferred to commissioners of stamps in Great Britain and Ireland.

Penalties, &c how sued for.

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Powers of former acts in relation to duties under commissioners of stamps, shall be put in force with respect to duties placed under their management.

Sect. 5. "That all powers, provisions, clauses, regulations, and directions, and all fines, forfeitures, pains, and penalties contained in and imposed by any act or acts in force in Great Britain and Ireland respectively, immediately before the passing of this act, in relation to any of the duties under the management of the commissioners of stamps in Great Britain and Ireland respectively, so far as the said acts or any of them can be made applicable to the said duties on gold and silver plate, and to the duties on such licences as aforesaid respectively, shall be of full force and effect, and shall be observed, applied, enforced, and put in execution with respect to the duties by this act placed under the management of the said commissioners of stamps in Great Britain and Ireland respectively, and for the stamping and marking such plate, and the vellum, parchment, and paper on which any such licences shall be granted, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating to the said duties, as fully and effectually to all intents and purposes as if all such powers and authorities, rules, regulations, and directions, provisions, fines, pains, penalties, and forfeitures had been repeated and specially enacted in this present act, and had been applied to the duties by this act continued in force, and placed under the management of the said commissioners of stamps respectively."

Commissioners of stamps in Ireland may stay proceedings for recovery of penalties, &c.

Sect. 6. "That from and after the said 5th day of July, 1825, it shall be lawful for the commissioners of stamps in Ireland to stay the proceedings in any prosecution commenced by their direction for the recovery of any penalty or penalties incurred by any person or persons under this act, or under any other act or acts in force immediately before the passing of this act, relating to any of the duties under the management of the said commissioners of stamps, on payment of part only of any such penalty or penalties, with or without costs, or on payment only of the costs incurred in such prosecution, or any part thereof, as the said commissioners shall judge proper and expedient; and that it shall also be lawful for the said commissioners at their discretion to give all or any part of the sums paid by way of penalty in any such prosecution as aforesaid to or among the person or persons informing them of the offences in respect of which any such penalty shall be incurred or paid; any thing in any former act or acts contained to the contrary thereof notwithstanding."

Plate and pawnbroker's licences to expire annually on 31st July.

By the 9 Geo. IV. c. 49, s. 12, "That every licence which shall have been granted at any time before the passing of this act, or which shall be granted at any time before the 31st day of July, 1828, to any person trading in, vending, or selling any gold or silver plate, or any gold or silver goods or wares, or to any pawnbroker trading in, vending, or selling any gold or silver plate, or taking or delivering out pawns of such plate, goods, or wares, or to any refiner of gold or silver, in Great Britain, or to any person for using or exercising the trade or business of a pawnbroker in Great Britain, shall cease and determine from the said 31st day of July, 1828; and that every licence which at any time after the 31st day of July, and before the 1st day of September, 1828, or in any subsequent year, shall be granted by the commissioners of stamps, or their proper officer, to any person for any of the purposes aforesaid, shall bear date on the 1st day of August in such year respectively; and that every such licence which shall be granted at any other time in the year 1828, or in any subsequent year, shall be dated on the day on which such licence shall be actually granted; and every such licence, whatever may be the date thereof, shall have effect and be in force from the day of the date thereof until and upon the 31st day of July then next following, and shall then cease and determine."

Proportionate allowance to be made upon certifi-

Sect. 13. "That it shall be lawful for the commissioners of stamps, and they are hereby authorized and required, to make and pay, in such manner and under such regulations as they shall direct, to any and

every person who shall have obtained and be in possession of any certificate or licence which under the provisions of this act shall cease and determine before the expiration of the full term for which such certificate or licence shall have been originally granted, an allowance of a proportionate part of the stamp duty originally paid on such certificate or licence, according to the term or period then to come or unexpired thereon."

cates and licences unexpired.

Sect. 14. "That no such allowance shall in any case be made to any person who shall not take out a new certificate or licence under the provisions of this act, nor unless the certificate or licence in respect of which such allowance shall be claimed shall be delivered up to the said commissioners of stamps, or their proper officer, on or before the 5th day of April, 1829; and the said commissioners of stamps, or their officer, shall cancel all certificates or licences so delivered up, and on which such allowance shall be made."

Allowances not to be made in certain cases.

By 1 Geo. IV. c. 14, s. 1, "That no drawback or allowance shall be paid, nor any debenture given, on the exportation to foreign parts of any plate of gold wrought or manufactured in Great Britain into rings; any law, custom, or usage to the contrary notwithstanding."

No drawback on exportation of plate gold made in Great Britain into rings; nor on any article of gold manufactured in Great Britain, unless it exceeds the weight of two ounces.

Sect. 2. "That no drawback or allowance shall be paid, or any debenture given, after the 1st [day of June, 1820, on the exportation to foreign parts of any articles of gold wrought or manufactured in Great Britain unless the same shall exceed the weight of two ounces."

And see tit. "*Plate,*" Vol. V.

(13). POST-HORSES.

(13). *Post-horses.*

[2 & 3 Will. IV. c. 120; 6 & 7 Will. IV. c. 45.]

By the 6 & 7 Will. IV. c. 45, intituled "*An Act to transfer the Collection and Management of the Duties in Great Britain on Horses let for Hire, and on Licences relating to the same, from the Commissioners of Stamps and Taxes to the Commissioners of Excise,*" (28th July, 1836), after reciting, that by an act passed in the second and third years of the reign of his present Majesty, intituled "An Act to repeal the Duties under the Management of the Commissioners of Stamps on Stage Carriages and on Horses let for Hire in Great Britain, and to grant other duties in lieu thereof; and also to consolidate and amend the Laws relating thereto," certain duties in Great Britain were amongst others, granted for and in respect of every horse let for hire, as in the said act is mentioned, and for every licence relating to the same, which duties were thereby placed under the management of the commissioners of stamps, and were denominated and deemed to be stamp duties: and that by an act passed in the fourth and fifth years of his said Majesty's reign, intituled "An Act to amend the Laws relating to the Land and Assessed Taxes, and to consolidate the Boards of Stamps and Taxes," it was amongst other things enacted, that the several persons appointed as therein mentioned commissioners of stamps for the United Kingdom of Great Britain and Ireland and commissioners for the affairs of taxes in Great Britain respectively should be and become one consolidated board of commissioners, and be called "The Commissioners of Stamps and Taxes," and that from thenceforth all the several duties, matters, and things which then were collected by or under the care and management of the said commissioners of stamps and of the said commissioners for the affairs of taxes respectively should be collected by and should be under the care and management of the commissioners of stamps and taxes in the same manner as such duties, matters, and things respectively had theretofore been collected by or had been under the care and management of the said commissioners of stamps and of the said commissioners for the affairs of taxes respectively: and that it is expedient to transfer the collection and management of the said duties on horses let for hire, and on

6 & 7 Will. 4, c. 45.

2 & 3 Will. 4, c. 120.

4 & 5 Will. 4, c. 60.

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From 31st January, 1837, the care and management of duties on horses let for hire, and on licences relating to the same, transferred from commissioners of stamps and taxes to commissioners of Excise.

licences relating to the same, from the said commissioners of stamps and taxes to the commissioners of Excise; enacted, "That from and after the 31st day of January 1837 the care and management of the rates and duties granted and made payable by the said first-recited act in and throughout Great Britain for and in respect of every horse let for hire, and every licence relating to the same, and mentioned and described in the said schedule (A.) to the said act annexed, shall be and the same are hereby transferred from the commissioners of stamps and taxes to the commissioners of Excise in Great Britain for the time being; and the said rates and duties shall thenceforth be denominated and deemed to be duties of Excise, and shall be raised, levied, collected, and paid and accounted for by and under the authority, care, and management of the said commissioners of Excise."

Powers &c. of 2 & 3 Will. 4, c. 120, to be executed by commissioners of Excise, and powers &c. of Excise acts to be in full force for collecting the duties transferred.

Sect. 2. "That all the powers, provisions, regulations, and directions contained in the said first recited act shall be executed and enforced by the commissioners of Excise and their officers respectively, for securing and collecting the said duties, as fully and effectually as if such powers, provisions, regulations, and directions had been originally given to the said commissioners of Excise and their officers respectively, and as if the same were repeated and re-enacted in this act, and that all the powers, provisions, regulations, and directions, forfeitures, pains, and penalties contained in and imposed by the said act, and all the provisions, powers, regulations, and directions, forfeitures, pains and penalties contained in and imposed by any act or acts in force immediately before the passing of this act, in relation to any of the duties of Excise, so far as such last-mentioned provisions, powers, regulations, directions, forfeitures, pains, and penalties, shall be applicable to the said duties on horses let for hire, or on licences relating to the same, and so far as the same shall not be inconsistent with the special powers, provisions, regulations, and directions, forfeitures, pains, and penalties contained in the said first-recited act, shall be of full force and effect, and shall be applied and put in execution for securing, collecting, recovering, and paying the said last-mentioned duties, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such powers, provisions, regulations, and directions, forfeitures, pains, and penalties were repeated and specially enacted in this act: and wherever in the said first-recited act the head office for stamps or the solicitor of stamps in England or Scotland respectively, or any officer of stamp duties, is mentioned or designated, the same shall, so far as relates to the duties on horses let for hire and on licences relating to the same, be deemed and taken to mean the chief office of Excise in London, the solicitor of Excise in England or in Scotland, as the case may be, and any officer of Excise respectively; and the account by the said act directed to be kept and to be intituled 'Stamp Office Weekly Account,' shall be intituled 'Excise Office Weekly Account.'"

2 & 3 Will. 4, c. 120.

The 2 & 3 Will. IV. c. 120, intituled "*An Act to repeal the duties under the Management of the Commissioners of Stamps on Stage Carriages and on Horses let for hire in Great Britain, and to grant other duties in lieu thereof: and also to consolidate and amend the Laws relating thereto,*" (16th Aug. 1832), after reciting that it is expedient to repeal the duties under the management of the commissioners of stamps in respect of stage coaches and of horses let for hire in Great Britain, and to grant other duties in lieu thereof, and also to consolidate and amend the laws now in force relating to such stage carriages and horses as aforesaid respectively enacted, (in respect of the duties on horses let to hire, which is the only part of this act relating to the subject under discussion, and therefore necessary to be inserted here), that the act next hereinafter mentioned shall remain and continue in force until and upon the 10th of October 1832, and shall from thenceforth cease, determine, and be

repealed; (that is to say), the 25 Geo. III. c. 51, intituled "*An Act for Repealing the Duties on Licences taken out by Persons letting Horses for the purpose of travelling Post and on Horses let to Hire for travelling Post and by Time, and on Stage Coaches, and for granting other Duties in lieu thereof, and also additional Duties on Horses let to Hire for travelling Post and by Time,*" except such part as is hereinafter provided.

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Sect. 2. That an act passed in the fourth year of the reign of his late Majesty King George the Fourth, intituled "*An Act to Repeal the Duties upon Horses let to Hire for the purpose of Travelling in Great Britain, and to grant other Duties in lieu thereof, and to provide for letting the same to farm,*" shall continue in force until and upon the thirty-first day of January one thousand eight hundred and thirty-three, and shall from thence cease, determine, and be repealed, save and except only so far as is hereinafter in that behalf provided.

The 4 Geo. 4, c. 62, relating to duties on horses let for hire, repealed after 31st January, 1833.

Sect. 3 provides and enacts that nothing in the act contained shall extend to repeal the recited acts which may repeal any former acts: and also as to any arrears of duty, and to penalties, &c. incurred.

The following are the sections of the above statute applicable to horses let for hire: the alterations alluded to in the 6 & 7 Will. IV. c. 45, at the commencement of this head, must be attended to in reading this act; viz. for "stamps" to read "excise":—

Sect. 4. "That in lieu of the duties repealed by this act there shall be raised, levied, collected, and paid unto and for the use of his Majesty, his heirs and successors, in and throughout Great Britain, for and in respect of every stage carriage and every horse let for hire and every licence relating to the same, and for or in respect of passengers conveyed for hire as mentioned and described in the Schedule (A.) to this act annexed, the several duties or sums of money set down in figures against the same respectively, or otherwise specified and set forth in the same schedule; and that the said schedule shall be deemed and taken to be part of this act; and that all the said duties shall be under the management of the commissioners of *Stamps*, and shall be denominated and deemed to be *Stamp* duties" (*a*).

Grant of duties specified in Schedule (A.) hereto annexed.

Sect. 61. "That the commissioners of *Stamps* or their officers shall supply all such licensed postmasters with proper tickets, and shall also supply all toll-gate keepers with proper exchange tickets and check tickets; and that the tickets in respect of every horse or of any number of horses let for hire by the mile shall be adapted for the insertion of the number of miles and the name of the town or place to which every such horse shall be hired to go, and if to London, the name of the street, square, or place therein; and that the tickets in respect of every horse or of any number of horses let for hire for any period of time, or in any other manner than by the mile, shall be adapted for the insertion of the names of the places from and to which every such horse shall be hired to go, or to go to and return from, the day or the number of days for which every such horse shall be let for hire, and if such hiring shall be for any period of time exceeding one day, then for the insertion of the name and place of residence of the person hiring such horse, and the day upon which the hiring shall commence; and all such tickets in the several cases aforesaid shall also be adapted for the insertion of the number of horses let for hire, the day of the month, the month and year on which every such horse shall be so let for hire, and the christian name and surname and place of residence of the person letting the same; and the ticket hereinafter required to be given by any toll-gate keeper in exchange for any ticket delivered to him shall be adapted for the insertion of the name of the county in which the toll gate at which such exchange ticket shall be given is situated, together with the name of such toll gate, the day of the month, the month and year upon which the hiring

Commissioners or their officers to supply postmasters and toll-gate keepers with proper tickets.

Exchange tickets to be adapted for insertion therein of certain particulars.

(*a*) For "*Stamps*" must be read "*Excise*" in this act.

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2 & 3 Will. 4, c. 120

shall be or commence, the number of horses, the day or number of days, the names of the places from and to which every such horse shall be hired to go, or to go to and return from, the number of miles, and the names and residences of the persons letting and hiring every such horse, as the said particulars or any of them shall be expressed in the original ticket."

Postmaster shall deliver tickets with hire of horses.

Sect. 62. "That every licensed postmaster who shall let any horse for hire shall, by himself or his servants, previous to the using of any such horse, deliver to the person hiring such horse, or to the postillion or person to be employed to drive such horse, a ticket properly filled up with respect to all the particulars hereinbefore mentioned which shall be applicable to the hiring of every such horse; and any postmaster who shall neglect or refuse to deliver such ticket according to the directions of this act shall forfeit ten pounds."

Penalty for neglect, 10*l.*

No person shall pay hire for more miles than expressed in the ticket.

Penalty for not filling up ticket truly.

Sect. 63. "That no person hiring any horse shall be compelled to pay for a greater number of miles for the hire of such horse than shall be expressed upon the ticket by this act directed to be delivered as aforesaid relating to the hiring of such horse; and any licensed postmaster who shall insert or cause or permit to be inserted in any such ticket the name of any other town or place than the town or place to which or to and from which the horse shall be hired to go or to go and return, or a less number of miles than such horse shall be actually hired to go, shall forfeit ten pounds; and it shall be lawful for the commissioners of *Stamps*, if they shall so think fit, after conviction of such offender, to refuse to grant to him any such licence in future."

Persons using hired horses shall deliver tickets at first toll-gate, and receive check tickets.

Sect. 64. "That every person who shall receive from the person letting any horse for hire any ticket relating to the hiring of such horse, shall deliver or cause to be delivered every such ticket to the toll-gate keeper at the first toll gate through which such horse shall pass or go; and every person who shall deliver to any toll-gate keeper any such ticket as aforesaid, relating to the hiring of any horse let for hire in any other manner than by the mile, shall ask for and receive from such toll-gate keeper the proper exchange ticket or check ticket containing the several particulars hereinbefore mentioned, which shall be applicable to the hiring of any such horse; and every such exchange ticket or check ticket shall, on demand of the toll-gate keeper, be produced and shewn at every toll gate through which such horse shall afterwards pass or go during the journey, or within the time for which such horse shall have been let for hire."

Toll-gate keepers shall demand tickets, and give check tickets in exchange.

Sect. 65. "That the keeper of every toll gate through which any horse let for hire shall first pass shall demand of the person using such horse, or of the postillion or person employed to drive the same, the ticket issued for and in respect of such horse; and every such toll-gate keeper shall deliver to the person using any horse let for hire in any other manner than by the mile, or to the postillion or person employed to drive such horse, an exchange ticket or check ticket, properly filled up with respect to the particulars in that behalf hereinbefore mentioned, and shall receive such original ticket, and write his name thereon, and file the same; and it shall be lawful for the keeper of any toll gate to prevent any horse let for hire from passing through any such gate, unless the proper ticket, exchange ticket, or check ticket required by this act, containing and specifying the particulars in that behalf hereinbefore mentioned which shall be applicable to the hiring of such horse, shall be first delivered or produced and shown to such toll-gate keeper, or the person using such horse shall pay to such toll-gate keeper one shilling and nine-pence in respect of every such horse, which sum such toll-gate keeper is hereby authorized to demand and receive for his own use and benefit; and any toll-gate keeper who shall neglect to demand or shall refuse to receive any ticket by this act directed to be delivered to him, or who shall neglect or refuse to write his name thereon, or to file the

Persons not to pass gates without producing tickets, or paying 1*s.* 9*d.* for every horse.

Penalty on toll-gate keeper for neglecting to demand tickets, or

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2 & 3 Will. 4, c. 120.

same when delivered, or who shall neglect or refuse to give any ticket by this act directed to be given by him in exchange, or who shall deliver any exchange ticket or check ticket without having first received the necessary ticket containing the particulars in that behalf hereinbefore mentioned, or who shall make or suffer to be made any alteration whatever in any ticket after the same shall have come to his possession, or who shall deliver any ticket hereinbefore directed to be received and filed by him to any person other than the person duly authorized to receive the same, or who shall permit any person to inspect any ticket by him received and filed as aforesaid other than the person duly authorized to receive the same, or who shall demand or receive, or shall agree to take or accept, any less sum of money than he is by this act authorized to demand and receive and retain to his own use, shall forfeit ten pounds."

for other improper conduct relative to such tickets, 10*l.*

Sect. 66. "That if any person shall neglect or refuse to deliver at any toll gate any ticket which he ought, according to the provisions of this act, to deliver at such gate, or if any person shall falsely allege that any horse with which he shall pass any toll gate is not a hired horse, in order to avoid being stopped, or to avoid the payment of the sum which the toll-gate keeper shall be entitled to demand in default of any such ticket being delivered or shewn, every person so offending shall forfeit ten pounds."

Penalty on persons neglecting to deliver tickets, or falsely alleging hired horses to be their own, 10*l.*

Sect. 67. "That the keeper of every toll gate within the distance of five miles from the head office for Stamps in the city of Westminster shall, at such times as shall be directed by the commissioners of *stamps* or their proper officer, bring or send all the tickets by him received to the said head office, or to such other place within the bills of mortality as the said commissioners or officer shall appoint; and the keeper of every toll gate beyond the distance of five miles from the said head office shall bring or send all the tickets by him received to such places and at such times as the collector appointed to collect such tickets shall require, provided such places shall not be at a greater distance than the nearest market town, or shall, upon demand made to him for that purpose, deliver or cause to be delivered all such tickets as aforesaid to such collector; and any toll-gate keeper who shall neglect or refuse to bring or send or deliver, in manner aforesaid, all the tickets received by him, shall for every ticket he shall so neglect or refuse to bring, send, or deliver, forfeit twenty shillings."

When and where toll-gate keepers shall deliver tickets received by them.

Penalty, 20*s.* per ticket.

Sect. 68. "That every toll-gate keeper shall be entitled to demand and receive from the collector to whom he shall bring, send, or deliver such tickets as aforesaid one farthing for and in respect of each horse specified in every ticket, and also one farthing for each such horse for every day more than one and less than twenty-eight successive days in such tickets mentioned, and such collector is hereby required to pay or allow such sums accordingly."

Allowances to be made to toll gate keepers for tickets delivered by them.

Sect. 69. "That in and across any public road, on which any toll gate shall not be erected sufficient for the purposes of this act, it shall be lawful for the commissioners of *stamps* to cause gates and bars to be erected for the receipt of the tickets directed to be issued in pursuance of this act, and to place a proper person at every such gate or bar, who shall have power and authority to collect such tickets, and to demand the money from the traveller for not producing and shewing any such ticket in like manner as any toll-gate keeper is by this act authorized to collect and demand the same; and every such person shall be subject to the same penalties for any thing done or omitted contrary to this act as any toll-gate keeper is by this act subject and liable to; and every such gate or bar shall be deemed and taken to be a toll gate for all the purposes of this act."

Commissioners of *stamps* may erect gates in certain cases for receipt of tickets.

Sect. 70. "That where any licensed postmaster shall let for hire any horse for twenty-eight successive days or more, and such horse shall be

When horses hired for twenty-eight days or more are

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returned within that period, check ticket shall be delivered up to collector.

Penalty on postmaster for neglect, 20*l.*

Penalty for using a check ticket fraudulently, 50*l.*

Postmasters to account for tickets delivered to them, and to re deliver to collector such as remain unaccounted for, or to pay value thereof.

Penalty for neglect or refusal, 10*l.*

Penalty for forging tickets, 50*l.*

Commissioners of *Stamps* shall deliver to licensed postmasters forms of account, adapted for insertion of certain particulars therein.

returned to such postmaster before the expiration of the time for which such horse shall have been so let for hire, such postmaster, at the time of receiving back such horse, shall ask for and receive from the person so returning such horse the check ticket received by such person in exchange for the original ticket delivered to him on the letting of such horse, and shall, within three days after the return of such horse, deliver up or transmit such check ticket to the collector of the said duties to whom he ought to deliver his Stamp-office weekly account; and if any licensed postmaster shall refuse or neglect to ask for such check ticket, or, having received the same, shall refuse or neglect to deliver up or to transmit the same to the said collector within the time aforesaid, he shall forfeit twenty pounds; and if such postmaster shall use any such check ticket, or shall permit the same to be used, or shall give out the same to any person for the purpose of being used to cover and protect any other letting for hire from the duty hereby granted, such postmaster shall forfeit fifty pounds."

Sect. 71. "That every licensed postmaster shall from time to time, whenever he shall be thereunto requested by any collector or other authorized officer of *stamp* duties, as well during the continuance of any licence to such postmaster as at or after the expiration thereof, well and faithfully account to such collector or officer respectively for all the tickets which shall have been delivered to such postmaster in pursuance of this act, under or in consequence of any such licence as aforesaid; and such postmaster shall also, on demand, re-deliver to such collector or officer all such tickets as shall not be satisfactorily accounted for in manner aforesaid, or in default thereof such postmaster shall be liable to pay for every ticket not accounted for as aforesaid after the rate of one shilling for every horse specified or expressed by figures or otherwise upon such ticket and in the receipt given by such postmaster for the same; and such rate or sum of one shilling for every horse specified or expressed as aforesaid shall be deemed to be the value of every such ticket, and shall be a debt due to his Majesty from such postmaster, and shall be recovered accordingly; and if any such postmaster shall neglect or refuse to account to such collector or officer in the manner directed by this act for every or any such ticket as aforesaid, or shall neglect or refuse to pay to such collector or officer the value of every or any such ticket as shall not be satisfactorily accounted for, and as shall not be re-delivered, on demand, to such collector or officer in the manner directed by this act, every such postmaster so offending shall forfeit ten pounds, over and above the value of every such ticket not so accounted for or re-delivered."

Sect. 72. "That any person who, with intent to defraud his Majesty or any other person, shall falsely make, forge, or counterfeit, or shall cause or procure to be falsely made, forged, or counterfeited, or shall wilfully aid or assist in the false making, forging, or counterfeiting of any ticket by this act authorized or directed to be used, or shall utter or publish as true any such false, forged, or counterfeited ticket, shall forfeit fifty pounds."

Sect. 73. "That the commissioners of *stamps* or their officer, at the time of issuing any licence to any postmaster, shall deliver to such postmaster papers, intituled '*Stamp* office weekly account,' which shall be adapted for the insertion of the following particulars relating to the horses which may be let for hire; (that is to say,) the day of the month, the month and the year of such letting for hire, the names of the towns or places from which and to which, or from which and to which and back again, such horses shall be hired to go, according as the hiring may be, the number of every carriage required by this act to be numbered, the christian name and surname of every postilion or driver employed, the amount of the sum charged for or in respect of every letting for hire, the number of horses let for hire, the number of days and the

number of miles for which such horses shall be let for hire, and the amount of the duty payable for and in respect of every such letting for hire, as the case may be or shall require, according to the following form, or such other form as the said commissioners shall judge convenient for keeping such account:

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STAMP OFFICE WEEKLY ACCOUNT.											
Day of the Month.	Month and Year.	From what Place and to what Place (and back, if so hired).	Number of Carriage.	Christian Name and Surname of Postillion or Driver.	The Sum charged.	By Time.			By the Mile.		Duty.
						Number of Horses.	Number of Days.	Number of Miles.	Number of Horses.	Number of Miles.	
											£ s. d.

Particulars to be inserted in *stamp* office weekly accounts.

Sect. 74. "That every licensed postmaster shall truly insert and set forth in such his *stamp* office weekly account the several particulars following; (that is to say,) the day of the month, the month and year, on which every horse let for hire by him shall be let for hire, and from and to what place, or from and to what place and back again, every such horse shall be hired to go, the number of every carriage (which by this act is required to be numbered) which shall be furnished with any such horse, the christian name and surname of every postillion or driver employed with every such horse, the amount of the sum charged for the hire or use of every such horse, where in any case allowed by this act the postmaster shall elect to pay one-fifth thereof for the duty on such letting, the time for which the same shall be let for hire or used, the number of horses so let for hire, and where the distance shall be ascertained the number of miles within which the same shall be hired to go or to go and return, or such of the several particulars aforesaid as shall be applicable to each respective letting for hire, and in all cases the amount of the duty payable for and in respect of every horse upon every such letting for hire or using; and whenever such licensed postmaster shall let any horse for hire for twenty-eight successive days or more he shall insert and set forth in such his *stamp* office weekly account the several particulars following; (that is to say,) the number of horses so let for hire, the day of the month, the month and year on which such hiring shall commence, the number of every carriage by this act required to be numbered which shall be furnished therewith, the christian name and surname of every postillion or driver employed with every such horse, the time for which the same shall be hired, and the name and place of abode of the person hiring the same; and such postmaster shall also insert in every such account a memorandum or notice of every horse which shall have been let for hire by him for twenty-eight successive days or more, and which since the date of his last account shall have been given up and returned to him by the hirer before the expiration of the time for which such horse shall have been let for hire, and the day of the month on which the same shall have been so given up and returned, and also the amount of the duty payable in re-

On letting horses for twenty-eight successive days or more.

Where horses let for twenty-eight successive days or more are returned before expiration of the term.

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Penalty for neglect, 20*l.*

spect of the time during which every such horse shall have been under the direction of the person hiring the same by virtue of such letting for hire as aforesaid; and in case of the neglect or omission of any licensed postmaster to insert in any such *stamp* office weekly account the particulars hereinbefore respectively mentioned, or any of them, applicable to each respective letting for hire, he shall for every such neglect or omission forfeit twenty pounds."

Entries to be made on day horses are let or returned;

Penalty, 40*s.*

Sect 75. "That every licensed postmaster who shall let any horse for hire shall enter or cause to be entered, in such his *stamp* office weekly account, the several particulars by this act required to be inserted therein, on the day on which any such horse shall be so let for hire, or so given up and returned as aforesaid, or on the day next immediately following, or in default thereof he shall forfeit forty shillings."

Account to be open for inspection of proper officers;

Penalty, 10*l.*

Sect. 76. "That every such *stamp* office weekly account of every licensed postmaster shall be open for the inspection and examination at all seasonable times of the commissioners of *stamps*, or any collector of the said duties, or any authorized officer of *stamp* duties; and any postmaster who shall refuse to permit such commissioners or collector or officer, at any seasonable time, to inspect such his *stamp* office weekly account shall for every such refusal forfeit ten pounds."

When and where licensed postmasters shall deliver their accounts and pay duty thereon.

Sect. 77. "That every licensed postmaster residing within the distance of five miles from the head office for *stamps* shall attend and deliver his stamp office weekly accounts, and shall pay the duties for which he shall be accountable either to the commissioners of *stamps* at the said head office, or to some collector of the said duties, at such place and at such time as shall be appointed for that purpose by a notice to be given upon the blank forms of the *stamp* office weekly accounts which shall from time to time be delivered to such postmaster for the purpose of making therein the entries required by this act, provided such place be not at a greater distance than two miles from the said head office; and every licensed postmaster not residing within five miles of the said head office shall attend and deliver his *stamp* office weekly accounts, and shall pay the duties for which he shall be accountable to the collector of the said duties authorized to receive the same, at such place in the market town in which such postmaster shall reside, or (in case he shall not reside in a market town) in the market town nearest to his place of residence, and at such time as shall be appointed for that purpose by a notice to be given in manner aforesaid, under the penalty of twenty pounds for every default in not attending to deliver or in not delivering any such account at the time and in manner aforesaid, and double the amount of the duties due and payable by such postmaster, so far as the same can be ascertained; and in default of the delivery of any such account the said duties may be computed by the tickets which such postmaster shall have issued or caused to be issued under the provisions of this act, by calculating the rate of duty imposed by this act upon the number of horses, and for the number of miles or days, or otherwise, as the case may be, specified or expressed upon such tickets respectively, without regard to the option of such postmaster, in any case, of paying one fifth part of the sum charged for the hire of any of such horses for the duty on the letting thereof."

Penalty for default, 20*l.*

Postmaster to make declaration of truth of his account.

Sect. 78. "That every licensed postmaster shall, at the respective times of delivering his account, and paying the money due thereon, make and subscribe, in the presence of the collector or other officer authorized to receive such account, a declaration of the truth of the account then delivered in the form following:

"*I*, A. B., *do declare, That the* stamp *office weekly account hereunto annexed doth contain a just and true statement of the number of horses which have been let for hire by me or my servants, or on my account and behalf, from the day of to the day of both inclusive, together with the manner in which such horses have been so let for hire as aforesaid; and also the full*

amount of the duty due and payable by me, or for which I am chargeable or accountable, in respect of every such horse so let for hire by me or on my account as aforesaid during the time aforesaid."

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Penalty for refusal, 20*l.*

And if any licensed postmaster shall refuse to make and subscribe such declaration in the manner by this act required, it shall nevertheless be lawful for the collector or other such officer as aforesaid to demand and receive the money due upon such account, and such postmaster shall forfeit twenty pounds for such refusal."

Consent of commissioners of *Stamps* requisite to prosecute for the two last-mentioned penalties.

Sect. 79 provides and enacts, "That it shall not be lawful for any person to inform, sue, or prosecute, either in any court of record or before any justice of the peace, or otherwise, for recovery of the said penalty of twenty pounds and double duty for any default in not attending to deliver or in not delivering any such account as aforesaid, or for recovery of the said penalty of twenty pounds for refusing to make and subscribe any such declaration as aforesaid, without having first obtained the consent in writing of two or more of the commissioners of *stamps* for that purpose, unless the action, suit, or prosecution for any such penalty as aforesaid shall be carried on by the solicitor of *stamps* in England or Scotland respectively; any thing herein contained to the contrary thereof notwithstanding."

Allowance to be made to postmasters out of monies duly accounted for and paid.

Sect. 80 enacts, "That the commissioners of *stamps*, or the collectors or other officers aforesaid, at the time of their settling the respective accounts of the several licensed postmasters in manner hereinbefore mentioned, shall allow to such postmasters, for their own use and benefit, and shall deduct from the amount payable by them on such their respective accounts, after the rate of three-pence in the pound out of the monies by them regularly accounted for and paid pursuant to the directions of this act."

Penalty on postmasters for wilful frauds.

Sect. 81. "That every licensed postmaster who shall wilfully conceal the letting of any horse for hire, or who shall make or render any false or fraudulent account touching or concerning the duties payable by him upon or in respect of horses let for hire, or who shall be guilty of any other fraudulent contrivance, device, or pretence whatsoever, with intent or design to defraud his Majesty, or any person, of any of the duties imposed by this act for or in respect of horses let for hire, shall forfeit fifty pounds; and it shall be lawful for the commissioners of *stamps*, if they shall so think fit, after judgment obtained against the offender, to refuse to grant any fresh licence to any such offender in future."

Persons letting horses shall be chargeable with duty thereon.

Sect. 82. "That every person letting any horse for hire shall be chargeble with the payment of the duty by this act imposed in respect of every such letting for hire, whether such person shall receive such duty or not; and every person who shall receive the hire for any horse shall be considered as the person to whom the duties by this act granted shall be paid, and shall be chargeable with the same as if such person were the actual proprietor of such horse, although the same may be the property of some other licensed person; and whenever it shall happen that any licensed postmaster at whose inn or residence any person shall apply to change horses cannot furnish horses to convey such person on his journey, and such person shall proceed on his journey with horses hired at and coming from any other inn or place, such licensed postmaster shall issue to any person demanding the same a fresh ticket, properly filled up, for the next stage of such journey, and shall receive the duty payable in respect thereof, and shall charge himself with such duty in the same manner as if such horses had been hired from such postmaster."

Postmaster who cannot furnish horses shall give tickets for horses furnished by others, and receive duty thereon.

Persons not licensed letting horses for hire shall be accountable for duties.

Sect. 83. "That if any person not licensed to let horses for hire shall let any horse for hire, such person shall be chargeable with the duty by this act made payable for and in respect of every horse which shall be so let for hire in the same manner as if he had obtained such licence as aforesaid, and whether such duty shall be received from the person

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Account to be delivered on week's notice from collector, verified on oath.

hiring such horse or not; and every such person so letting any horse for hire shall, upon one week's notice in writing for that purpose to him given by any collector of the said duties for the county, district, or place where he shall so let any horse for hire, deliver to such collector a true account in writing, signed by such person, of every such horse which he shall have let for hire, and shall not then have already accounted for, and of the manner in which every such horse shall have been let for hire, and of the duty payable in respect thereof, in the same manner as by this act is required to be done by licensed postmasters, and shall also verify such account by oath (to be administered by such collector), and shall thereupon pay to such collector the amount of such duty; and in case of any refusal or neglect so to do, then he shall forfeit twenty pounds for every default in not delivering such account verified as aforesaid, and double the amount of the duty which he shall be then chargeable with: provided always, that where any such notice shall have been given as aforesaid, then upon the delivery of such account in pursuance of such notice, and upon payment of all duty due thereon, and upon taking out such licence as ought to have been taken out previously thereto, the person so delivering such account shall be discharged from any penalty which he may be then liable to in consequence of having let for hire any horse mentioned in such account without having obtained such licence as aforesaid."

Penalty for neglect, 20*l.* and double duties.

Indemnity on accounting for duties and taking out licence.

Composition to be paid for horses used in carriages standing for hire as hackney carriages in country towns, and not going more than five miles from General Post-office there.

Sect. 84. "That every person in any city, town, or place who shall let for hire or use any horse for drawing any carriage to be used as a hackney carriage to any distance not exceeding five miles from the General Post-office of any such city, town, or place, shall be subject and liable to the payment of the sums following in lieu of and as a composition for the duties by this act chargeable upon horses let for hire; (that is to say,) the sum of five shillings per week for or in respect of all or any horses let for hire, or used for drawing every such carriage when drawn by two horses; and the sum of three shillings per week for or in respect of any horse or horses let for hire, or used for drawing any such carriage when drawn by one horse; and such person shall not be required, in respect of such horses so let for hire or used as last aforesaid, to keep the weekly accounts hereby directed to be kept or to deliver the tickets hereby directed to be delivered by persons letting horses for hire: provided always, that if any horse used for drawing any such carriage shall go a greater distance than five miles from any such General Post-office as aforesaid, the person letting for hire or using any such horse shall be subject to all the rules and regulations of this act in respect of horses let for hire, and shall be chargeable with the duties by this act imposed in respect of horses let for hire: provided also, that the person letting for hire or using any horse for drawing any such carriage as aforesaid, shall take out a licence expressly authorizing him so to do, and shall cause every such carriage to be numbered, and shall cause his christian name and surname, and the name of the city, town, or place, to be painted and inscribed upon the outside pannel of each door, or upon some conspicuous part of such carriage, in like manner as by this act is before directed in respect of carriages kept to be furnished or used with horses let for hire, and under and subject to the like penalties as are by this act imposed upon persons neglecting to take out licences, or neglecting to number or cause to be numbered any carriage kept to be furnished or used as aforesaid, or neglecting to paint or cause to be painted thereon the name of the person letting for hire or using any such horse with such carriage, and the name of the city, town, or place where such carriage shall be kept; and every person letting or using any horse for hire for drawing such carriage used as a hackney carriage as aforesaid shall attend and pay the said weekly duties at such times and places as persons licensed to let horses for hire are required by this act to do, and shall be subject to the like penalty for any neglect or default in attending and paying such duties as aforesaid: provided also,

Persons using horses in drawing such carriages to take out licence for that purpose, and to paint names, &c. on carriages.

Horses so used not

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that nothing herein contained shall extend to exempt from the payment of the general duties by this act imposed in respect of horses let for hire any person letting horses for hire to draw any such carriage, unless such carriage shall be regularly and constantly used for the purpose of plying for hire in the public streets of some city or town as a hackney carriage; and that in all informations, actions, suits, or other proceedings whatsoever respecting the payment of any duty, or the recovery of any penalty, in respect of any horse used in drawing any such carriage, the proof of such carriage being regularly and constantly used for the purpose aforesaid shall be upon the person letting such horse for hire: and provided also, that nothing herein contained relating to the payment of such composition as aforesaid shall extend to any horse or horses used for drawing any hackney carriage at any place within the distance of five miles from the General Post-office in the city of London."

to be exempt from general duties imposed by this act unless carriages are regularly used for plying.

Not to extend to hackney carriages in London.

Sect. 85. "That if any person liable under the provisions of this act to account for and pay any duty, not exceeding in amount the sum of fifty pounds, for or in respect of horses let for hire, shall refuse or neglect to account for and pay such duty according to the directions of this act, it shall be lawful for any justice of the peace having jurisdiction where such horses shall have been let for hire, and such justice is hereby required, on complaint made to him, to summon the party complained of, and any witnesses on either side, to be and appear before the said justice or before any other justice of the peace at a time and place to be appointed for that purpose; and either on the appearance of the party complained of, or in default thereof, it shall be lawful for such justice, or any other justice present at the time and place appointed for such appearance, to proceed to examine into the matter of fact, and on due proof being made of the sum due and owing for such duty as aforesaid, by the voluntary confession of the party, or by the oath of one or more witness or witnesses, to grant a warrant to any constable or other peace officer, or to any collector of the said duties, or any other officer of *stamp* duties, directing him to distrain every such person by his goods and chattels, and also to seize and take the carriages, horses, harness, and other things by this act made subject and liable to such duty, for the amount thereof, and of all the costs, charges, and expences of obtaining such warrant, and of the proceedings incident or relating thereto; and it shall be lawful for such constable or other peace officer, or collector or officer of *stamp* duties, and he is hereby required, to make such distress and seizure accordingly, and the distress so to be taken to detain and keep for the space of five days, at the costs and charges of the person distrained upon; and if the amount of such duty, and of all the costs, charges, and expences aforesaid, shall not be paid within such space of five days, then such constable or other peace officer, or collector or officer of *stamp* duties, shall cause the goods and chattels, carriages, horses, harness, and other things so seized or taken, to be sold in the manner directed by this act, and shall render the overplus (if any) of the money arising by the sale thereof, after deducting and retaining the amount of such duty, and all the costs, charges, and expences aforesaid, as well as the charges and expences of the sale, to the person so distrained upon, or to the owner of the carriages, horses, harness, or other things so seized and taken as aforesaid; and for the purpose of taking such distress it shall be lawful for such constable or other peace officer, and for such collector or officer of *stamp* duties, in the presence of any constable or other peace officer, where any refusal or resistance shall be made, to break open, in the daytime, any house, building, or place where any such carriages, horses, harness, or other articles and things, or any goods or chattels to be seized or taken under such warrant as aforesaid, shall be; and if no distress can be had or taken whereon to levy such duty, costs, charges, and expences, or in case an insufficient distress only can be found and shall be taken, then it shall be lawful for the justice by whom such warrant shall be granted to commit the

Duties on horses let for hire not exceeding 50*l.* recoverable by distress, on complaint made before a justice of the peace.

For want of sufficient distress, defaulter to be committed to gaol.

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person by or from whom such duty, costs, charges, and expences, or any part thereof, shall remain due or owing, to the common gaol or house of correction, there to remain until all such duty, and all costs, charges, and expences, or so much thereof as shall remain after deducting therefrom the proceeds of the sale of any insufficient distress which may have been taken and sold, shall be fully paid and satisfied."

Duties on horses let for hire may be let to farm.

Sect. 86. "That from and after the passing of this act it shall be lawful for the lords commissioners of his Majesty's Treasury, at any time and from time to time, as it shall be thought expedient, either by themselves, or by the commissioners of *stamps* by them authorized for that purpose, to let to farm the several duties by this act granted in respect of horses let for hire to any persons who shall be willing to farm the said duties or any part thereof, in separate divisions or districts according to the regulations and in the manner hereinafter mentioned: Provided always, that it shall not be lawful to let to farm the said duties or any part thereof, at any one time, for any longer period or term than three years from the day on which any such letting to farm shall commence and take effect."

Notice of letting to be inserted in Gazette.

Sect. 87. "That a notice of one calendar month at least shall be given by the said lords commissioners of the Treasury or by the commissioners of *stamps*, in the London Gazette, of the time and place of letting to farm the said duties or any part thereof, specifying the divisions or districts the duties within which it is intended to let to farm, and also the place or office at which proposals for taking to farm such duties, or any part thereof, shall be delivered."

Proposals to be delivered three days previous to letting.

Sect. 88. "That no such proposals shall be proceeded upon unless the same be signed by and in the proper names of the parties proposing to become bidders, and specifying the places of their abode, nor unless such proposals shall have been delivered as aforesaid at least three days previous to the day mentioned in the London Gazette for letting to farm the duties to which such proposals shall relate."

Mode of proceeding in putting up duties.

Sect. 89. "That the biddings for such duties shall be conducted under such regulations as shall be established for that purpose by the lords commissioners of the Treasury, or by the commissioners of *stamps* duly authorized as aforesaid, and that the person who shall be the highest bidder shall be the farmer or renter of the said duties or such part thereof as shall be then put up to farm, for such term, not exceeding three years as aforesaid, as may be determined on and as shall be inserted in the London Gazette; and such person shall execute a contract, to be prepared in pursuance of this act, containing such covenants, provisoes, and conditions as the said lords commissioners, or the commissioners of *stamps* authorized as aforesaid, shall deem necessary or expedient for securing the payment of the money or yearly rent contracted for, as well as for securing and compelling a due compliance with the terms and regulations of this act; and such person shall also give security by bond to his Majesty with three or more sufficient sureties, to the satisfaction of the said lords commissioners or of the commissioners of *stamps*, for securing the performance of the several covenants, clauses, and agreements contained in such contract, and also for securing the payment of the said money or yearly rent so contracted for to the receiver general of *stamp* duties, at the head office for *stamps* in Westminster, in equal portions, by eight several payments in the year, on the days to be fixed and appointed, before any such letting to farm as aforesaid."

Highest bidder to execute contract to farm duties, and give security for performance.

Deposit to be made by persons farming duties.

Sect. 90. "That it shall be lawful for the said lords commissioners of the Treasury, or the said commissioners of *stamps* authorized as aforesaid, to appoint the time for making a deposit of a sum of money, and the amount thereof, on account of the rent to be paid by the person who shall be declared the farmer of any of the said duties hereby allowed to be farmed; and in case any such person shall fail to make such deposit at the time appointed, or shall fail to execute a proper

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contract in writing, and to give satisfactory security for the payment of the rent and the due performance of such contract, in the manner directed by this act, within the time to be appointed for that purpose, it shall be lawful for the said lords commissioners, or the commissioners of *stamps* authorized as aforesaid, to declare the bidding and contract of such person to be null and void, and the deposit thereon made (if any) to be forfeited."

If duties be not let at time fixed, or if contract for farming same be vacated, they may be put up again, or be let by private

Sect. 91. "That in case any of the said duties to arise in any district shall not be let to farm at the time mentioned in such advertisement for want of a sufficient bidding for such duties, or in case the bidding or contract of any person who shall have been declared the best bidder for or the farmer of any of the said duties shall be declared or shall become null and void, it shall be lawful for the said lords commissioners, or the commissioners of *stamps* authorized as aforesaid, from time to time, whenever any such event shall happen, to appoint such future day as they shall judge most proper for letting to farm the said duties to arise in such district in the manner and upon the like notice as hereinbefore directed, or to receive proposals for farming such duties, and to let the same to farm by private contract, for any such period of time as aforesaid: Provided always, that no contract for letting to farm the said duties shall be made with any licensed postmaster, nor with any person for the use or on behalf of any licensed postmaster, nor so as that any licensed postmaster shall have any interest in or any benefit from any such contract, and any such contract made contrary to this act shall be utterly null and void: and if any contract made in pursuance of this act shall be assigned to any licensed postmaster or to any other person for the use of any licensed postmaster, or so that he shall have any interest therein or any benefit therefrom, such assignment shall also be utterly null and void."

Duties not to be farmed by any persons licensed to let horses.

Duties shall belong to district where tickets issued.

Sect. 92, reciting that in order to prevent disputes concerning the said duties when let to farm in cases where the same may be collected in one district or division, and the tickets may be delivered in another district or division, enacts, "That in such case the duties shall belong and the tickets issued thereupon shall be delivered and accounted for to the person who shall be the farmer of the duties arising within the district or division within which the inn, house, or other place shall be situate at which the postmaster shall be licensed; and every toll-gate keeper at whose gate or bar such ticket shall be delivered shall deliver the same to the farmer of the said duties arising within such district or division as aforesaid, at such time and in such manner as such tickets are by this act directed to be delivered to the several collectors of the said duties when the same are not let to farm."

Farmers of duties not to be disqualified from voting at elections.

Sect. 93. "That no person contracting to farm the said duties or any part thereof, or appointed a collector thereof, shall, by reason of such contract or appointment, be disqualified to vote at the election of any member to serve in Parliament, any law or usage to the contrary thereof notwithstanding."

Commissioners of *stamps* may depute the farmers and other persons on their behalf to be collectors of duties.

Sect. 94. "That it shall be lawful for the commissioners of *stamps*, from time to time as occasion shall require, to depute and appoint as well the persons who shall become farmers or lessees of the said duties, and their executors, administrators, and assigns, as any other persons approved by the said commissioners, upon the nomination and for the use of such farmers or lessees, or their executors, administrators, or assigns, to be collectors of the duties so farmed arising within the respective districts, with full power to grant the necessary licences to persons within the respective districts for letting horses for hire, and to receive the *stamp* office weekly accounts relating to the said duties by this act directed to be delivered by licensed postmasters within their respective districts, and to receive the money due thereon, and generally to execute and perform all other the powers, matters, and things touching the collecting, the managing, and enforcing the payment of the said

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duties within their respective districts, which by this act are authorized to be done by any collector of the said duties; and no deputation or commission appointing any person to be a collector of the said duties on horses let for hire shall be charged or chargeable with any higher *stamp* duty than one pound fifteen shillings: Provided always, that it shall be lawful for the said commissioners to revoke the deputation or appointment and authority of any person deputed or appointed a collector of the said duties upon any such nomination as aforesaid whenever the said commissioners shall think fit so to do."

Farmers may vary form of keeping weekly account, and add names of their districts on the tickets.

Sect. 95. "That it shall be lawful for such farmers or persons so farming the said duties or any part thereof, with the consent of the commissioners of *stamps*, to vary the form of keeping the weekly account directed by this act to be kept by the several licensed postmasters within their respective districts in such manner as such farmers shall judge most convenient for keeping such accounts, and also to add the name or number of their respective districts on the face or back of the tickets to be delivered by them to the several licensed persons in their respective districts."

All the powers of collectors under act may be exercised by farmers of duties.

Sect. 96. "That all the powers, provisions, regulations, matters, and things given, prescribed, or appointed by this act with relation to the duties on horses let for hire, or to the persons appointed or to be appointed to collect the same, may be put in force and carried into execution by any person farming the said duties or any part thereof, in like manner as any collector of the said duties is authorized and empowered by this act to put in force and execute the same; and every person farming the said duties or any part thereof shall be entitled to the same privileges, and to have and use the like remedies for collecting and recovering the duties by this act imposed, as if the duties were sued for by or on the behalf of his Majesty, and as if such duties had not been let to farm."

What shall be proof that persons are farmers of duties.

Sect. 97. "That it shall not be necessary, upon the trial or hearing of any information, action, suit, or other proceeding to be commenced for the recovery of any of the said duties on horses let for hire which shall be let to farm in pursuance of this act, or for the recovery of any penalty imposed by this act with relation to the said duties, to produce the instrument whereby the commissioners of *stamps* shall be authorized to let to farm the said duties or any of them, nor to prove the execution of any contract or agreement whereby any of the said duties shall be let to farm, nor to prove the execution of any assignment of any such contract or agreement, nor to prove the signatures of the said commissioners of *stamps* to any consent to prosecute for any such penalty as aforesaid: Provided always, that such contract, agreement, or assignment, and consent to prosecute, shall be produced on the trial or hearing of any such information, action, suit, or proceeding, and it shall be made to appear that the person claiming or acting under such contract, agreement, or assignment had in fact acted as the farmer of the duties therein mentioned or some of them; and in every such case such proof shall be deemed and taken by the court or justice before whom any such trial or hearing shall be had to be good and legal evidence of such person being the farmer of the duties mentioned in such contract, agreement, assignment, or other instrument, unless by other evidence the contrary shall be made to appear; any law or usage to the contrary notwithstanding."

Officers neglecting their duty to be liable to actions.

Sect. 98. "That if any officer of *stamp* duties, or other person employed in the execution of this act in relation to the said duties on horses let for hire, shall wilfully refuse or neglect to do or perform any matter or thing by this act required or directed to be done or performed by such officer or person, whereby any of his Majesty's subjects shall sustain any damage, such officer or person shall be liable in an action, to be founded on this statute, to answer to the party aggrieved for all such damages, with full costs of suit."

(13). *Post-horses.*

2 & 3 Will. 4, c. 120.

Inspectors and collectors may enter toll houses, to check stage carriages and horses let for hire, and to receive tickets, &c.

Sect. 99. "That it shall be lawful for any inspector of stamp duties, or any collector of the duties by this act granted in respect of horses let for hire, or for any other person authorized by the commissioners of *stamps*, on producing and showing (if required so to do) his appointment or authority in writing, from time to time to enter into any toll-house or other place at which any toll is or shall be by law payable or any ticket shall be receivable under this act, and in such toll-house or other place to remain so long as such inspector, collector, or other person so authorized shall think fit and requisite, for the purpose of examining and checking the stage carriages travelling upon any turnpike or other road, or for the purpose of receiving and examining the tickets relating to horses let for hire; and if any toll-gate keeper, toll collector, or other person shall refuse to permit any such inspector, collector, or other person authorized as aforesaid, to enter into or to remain in any toll-house or other such place as aforesaid, or shall obstruct or hinder or molest such inspector, collector, or other person authorized as aforesaid in entering into or remaining in such toll-house or place for the purposes aforesaid, or if any toll-gate keeper, toll collector, or other person shall in any way hinder, molest, or disturb, or use abusive or insulting language to any such inspector, collector, or other person authorized as aforesaid, either in the discharge of his duty or in the reasonable use of such toll-house or other place as aforesaid, every person so offending shall forfeit twenty pounds."

Penalty for refusing to permit them to enter or obstructing them in discharge of their duty, 20*l*.

Penalty on conniving at offences, 20*l*.

Sect. 100. "That if any person shall receive any sum of money, or any other consideration or reward of any kind whatsoever, for aiding or assisting in or for conniving at the commission of any offence against this act, he shall forfeit twenty pounds."

Duties recoverable as other *stamp* duties.

Sect. 101. "That all duties granted or imposed by or incurred under this act may be sued for and recovered by all such ways and means and in such manner and form as are and is or at any time hereafter shall be provided by law for the recovery of any other duties granted or imposed by or incurred under any other act relating to *stamp* duties, as well as by the particular ways and means provided by this act; and in all actions, bills, plaints, informations, and proceedings to be commenced, prosecuted, entered, or filed in the name of his Majesty or of any other person for the recovery of any such duties, or of any debts or penalties which may be incurred or become payable under this act, it shall be lawful for his Majesty, or any other person legally entitled to sue or prosecute for the same, to have and recover such duties, debts, and penalties, with full costs of suit, and all other reasonable charges and expenses."

Duties and penalties recoverable, with costs.

In what courts pecuniary penalties may be sued for.

Sect. 102. "That all pecuniary penalties imposed by or which may be incurred under this act may be sued or prosecuted for in any of his Majesty's courts of record at Westminster for any offence committed in England, Wales, or Berwick-upon-Tweed, and in his Majesty's Court of Exchequer in Scotland for any offence committed in that part of Great Britain called Scotland, by action of debt, bill, plaint, or information, wherein no essoign, protection, or privilege, nor more than one imparlance, shall be allowed: Provided always, that it shall not be lawful for any person to sue or prosecute for any such penalty in any of the courts aforesaid without having first obtained the consent in writing of two or more of the commissioners of *stamps* for that purpose, unless the action, suit, or prosecution for such penalty shall be carried on by the solicitor of *stamps* in England or Scotland respectively; and it shall be lawful for the said commissioners, if they shall think fit, to order the proceedings to be stayed in any such action, suit, or prosecution on payment of part only of any penalty incurred, with or without costs, or on payment only of the costs incurred or any part thereof, or otherwise, as they shall judge proper and expedient."

Consent of the commissioners of *stamps* requisite to sue for penalties.

Penalties not exceeding 20*l* reco-

Sect. 103 provides and enacts, "That it shall be lawful for any justice of the peace having jurisdiction where the offence shall be

(13). *Post-horses.*

2 & 3 Will. 4, c. 120.

verable before justice of peace.

Mode of proceeding.

committed to hear and determine any offence against this act which may subject the offender to any pecuniary penalty not exceeding twenty pounds; and it shall be lawful for any such justice and he is hereby required, upon information given or complaint made before him, to summon the party accused, and also the witnesses on either side, to be and appear before the said justice or before any other justice of the peace at a time and place to be appointed for that purpose; and either on the appearance of the party accused, or in default thereof, it shall be lawful for such justice, or any other justice present at the time and place appointed for such appearance, to proceed to examine into the matter of fact, and upon due proof made thereof by voluntary confession of the party, or by oath of one or more witness or witnesses, to give judgment for the penalty, and to award and issue out his warrant for the levying of any penalty so adjudged, together with the costs and expenses of such proceedings, and also the costs and expenses of such warrant and of levying the same on the goods of the offender, and to cause sale to be made of such goods in case they shall not be redeemed within five days, rendering to the party the overplus, if any; and where goods of such offender cannot be found sufficient to answer the penalty, and all such costs and expenses, it shall be lawful for such justice and he is hereby required to commit such offender to the common gaol or house of correction, there to remain for such term or period of time as is by this act fixed or provided as the term of imprisonment for the particular offence of which such offender shall have been convicted; and in any case where no such term of imprisonment is or shall be so fixed or provided as aforesaid, then such justice is hereby required to commit such offender to the common gaol or house of correction, there to remain for any time not less than three calendar months and not exceeding six calendar months if the full penalty imposed by this act for the offence of which such offender shall have been convicted shall amount to the sum of twenty pounds, and for any time not less than one calendar month and not exceeding three calendar months if such penalty shall not amount to twenty pounds, unless such penalty and all such costs and expenses shall be sooner paid and satisfied; and if the person convicted shall find himself aggrieved by the judgment of any such justice, it shall be lawful for such person to appeal against the same to the justices of the peace at the general or quarter sessions of the peace for the county or place within which the offence shall be committed which shall be held next after the expiration of ten days from the day on which such conviction shall have been made, of which appeal notice in writing shall be given to the prosecutor or informer seven clear days previous to the first day of such sessions; and such justices at such sessions are hereby authorized to examine witnesses upon oath, and finally to hear and determine such appeal; and in case the judgment of any such justice shall be affirmed, it shall be lawful for the justices at such sessions to award and order the person appealing to pay such costs occasioned by such appeal as to them shall seem meet: Provided always, that no person convicted before any such justice shall be entitled or permitted to appeal against such conviction in manner aforesaid, unless within five days next after such conviction made he shall enter into a recognizance with two sufficient sureties before such justice, to enter and prosecute such appeal, and to pay the amount of the penalty and costs in which he shall have been convicted, and also to pay such further costs as shall be awarded in case such conviction shall be affirmed on the hearing of such appeal; provided also, that no such proceedings so to be had or taken shall be quashed or vacated for want of form, or shall be removed by certiorari, suspension, advocation, or reduction, or by any other writ or process, into any superior or other court or jurisdiction, any law or usage to the contrary notwithstanding."

Appeal.

Proceedings not to be quashed for want of form, nor removed.

By whom penalties

Sect. 104 provides and enacts, "That it shall not be lawful for any

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2 & 3 Will. 4, c. 120. shall be recovered before a justice of the peace.

person other than the solicitor of *stamps*, or some other officer of his Majesty's *stamp* duties in England or Scotland respectively, to inform or prosecute before any justice of the peace for the recovery of any penalty imposed by or incurred under this act, except in the cases next hereinafter mentioned; (that is to say,) any penalty imposed or incurred with relation to horses let for hire, or the duties thereon, and any penalty incurred by the driver of any stage carriage by reason of the carrying of a greater number of passengers in, upon, or about such stage-carriage than is or shall be allowed by this act, or by the licence relating to such stage carriage, and any penalty imposed or incurred by reason of the carrying of any outside passenger, or any luggage on the roof or top of any stage carriage, contrary in any manner to the directions of this act, or by reason of any person sitting or being carried on any luggage, or upon that part of the roof of any stage carriage allotted for luggage, or by reason of more than one person besides the driver sitting or being carried upon the box of any stage carriage, or of refusing to permit or allow any stage carriage or luggage to be measured, or the passengers to be counted, or refusing or neglecting to stop such carriage at any toll gate for that purpose, or by reason of any other offence which may subject to any penalty the driver or conductor or guard of any stage carriage, or any person employed to hold the horses, or having the care of or being employed in or about any stage carriage, or any toll-gate keeper, toll-collector, constable, or peace officer, or by reason of any person summoned as a witness neglecting or refusing to attend or give evidence; and if any person, other than such solicitor or officer as aforesaid, shall commence or prosecute any information or complaint before any justice of the peace for the recovery of any penalty imposed by or incurred under this act, except in the several cases hereinbefore mentioned and allowed in that behalf, such information or complaint, and every proceeding thereupon had, shall be null and void to all intents and purposes: Provided always, that nothing herein contained shall extend to permit or allow any person other than the solicitor, or some other officer of *stamp* duties, to inform or prosecute for the recovery of any penalty imposed by or incurred under this act, by reason of the driver of any carriage or other person plying for passengers to be conveyed for hire by any carriage not having the proper numbered plates fixed thereon, unless the offender shall be apprehended, and taken before a justice of the peace, as authorized by this act."

Justices may mitigate penalties.

Sect. 105. "That it shall be lawful for any justice of the peace, before whom any person shall be convicted of any offence against any of the provisions of this act, to mitigate as he shall see fit any penalty by this act imposed in cases where such justice shall see cause so to do, provided that all reasonable costs and charges expended or incurred in prosecuting for such offence shall be always allowed over and above the sum to which such penalty shall be mitigated, and so as such mitigation do not reduce the penalty to less than one-fourth of the penalty incurred, exclusive of such costs and charges; any thing herein contained to the contrary notwithstanding."

Application of penalties.

Sect. 106. "That all pecuniary penalties imposed by or incurred under this act, which shall be sued or prosecuted for and recovered by or in the name of any person other than his Majesty's attorney-general in England, or his Majesty's advocate for Scotland, or the solicitor of *stamps*, or any other officer of *stamp* duties in England or Scotland respectively, shall respectively be distributed and divided in manner following; (that is to say,) one moiety thereof to his Majesty, and the other moiety thereof, with full costs of suit, to the person who shall inform and sue or prosecute for the same within fourteen days after the offence shall have been committed; and all such pecuniary penalties as aforesaid, which shall be sued or prosecuted for, and recovered by or in the name of his Majesty's said attorney-general in England, or advocate in Scotland, or by or in the name of such solicitor or officer as aforesaid, or for

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the recovery of which any information or complaint shall be made, or any action or suit shall be commenced after the expiration of the time aforesaid, shall go and be applied to the use of his Majesty: Provided always, that it shall be lawful for the commissioners of *stamps*, at their discretion, to give all or any part of such penalties, or shares of penalties, belonging to his Majesty, as rewards to any person or persons who shall have detected such offences, or given information which may have led to the discovery thereof, or to the conviction of the offenders."

Justices shall receive the crown's share of penalties, and pay the same to the clerk of the peace, to be remitted to *Stamp* Office.

Sect. 107. "That every justice of the peace before whom any person shall be convicted of any offence against this act, shall take and receive the penalty or share of the penalty belonging to his Majesty, levied or paid under or by virtue of such conviction, and every such justice shall pay or cause to be paid all such sums of money which he shall so take or receive as aforesaid, at the next general or quarter sessions of the peace after he shall have so taken or received the same, into the hands of the clerk of the peace, or other such officer of the county or place within which such conviction shall have been made, who shall, within ten days after his receipt thereof, and without fee or reward, pay or remit the same for the use of his Majesty to the solicitor of *stamps*, at the *Stamp* Office in Westminster or Edinburgh, as the conviction shall happen to be in England or Scotland respectively, any thing in any other act contained to the contrary notwithstanding; and every such justice shall, within one week after every such payment made by him to any clerk of the peace or other such officer, transmit to such solicitor as aforesaid a schedule containing the name of the person so convicted, the nature of the offence, and the amount of the penalty of and in which he shall have been convicted, the date of such conviction, and the sum of money which shall have been paid under or by virtue thereof, together with the name of the clerk of the peace, or other such officer to whom he shall have paid the same; and if any such justice shall neglect or omit to pay or cause to be paid to such clerk of the peace or other officer as aforesaid, at the time and in the manner hereinbefore directed, any such penalty or share of penalty received by such justice as aforesaid, or upon payment thereof shall neglect or omit to transmit to the proper solicitor of *stamps* such schedule as aforesaid, or if any such clerk of the peace or other officer shall neglect or omit to pay or remit any such penalty or share of penalty to such solicitor of *stamps* as aforesaid, within the time and in manner hereinbefore limited and directed in that behalf, every person so offending shall forfeit fifty pounds."

Penalty on the justice or clerk of peace for neglecting to pay over penalties received, 50*l.*

Service of justices' summonses and other notices.

Sect. 109. "That any summons issued by any justice of the peace, requiring any defendant or any witness or other person to appear before such justice, or any other justice, with reference to any information, complaint, or other proceeding for the recovery of any duty or penalty under this act, shall be deemed to be well and sufficiently served in case either the summons or a copy thereof be served personally upon any such person as aforesaid, or be left at his usual or last place of residence, or in case such person be a proprietor, driver, conductor, or guard of any stage carriage, be left with the book-keeper, or person for the time being acting as book-keeper for such stage-carriage, in any town or place from, into, or through which such carriage shall go or be driven nearest to the place where any such offence shall be committed; and any notice by this act required to be given to the proprietor of any stage carriage, or to any other person, shall be deemed to be well and sufficiently served in case either such notice, or a copy thereof, be served personally upon such proprietor or other person, or be left at his usual or last place of residence, (or in case of such proprietor) be left with any book-keeper, or person acting as book-keeper, at any office belonging to such proprietor."

Penalty on constables refusing to serve a summons, warrant, &c. 10*l.*

Sect. 110. "That if any constable or other peace officer shall refuse or neglect to serve or execute any summons, warrant, or order granted, issued, or made by any justice of the peace, or by any two of the com-

missioners of *stamps*, pursuant to any of the provisions of this act, every such constable or peace officer so offending shall forfeit ten pounds."

(13). *Post-horses.*

2 & 3 Will. 4, c. 120. Penalty on witnesses neglecting to attend, 10*l.*

Sect. 111. "That if any person who shall be summoned as a witness to give evidence before any justice of the peace or before any justices at sessions touching the matters alleged in or relating to any information, complaint, appeal, or other proceeding depending before such justice or justices for the recovery of any duty or penalty incurred under this act, shall neglect or refuse to appear before such justice or justices at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed by such justice or justices, or if any person so summoned shall appear, but shall refuse to be examined and give evidence before such justice or justices touching the matters aforesaid, every such person so offending shall forfeit ten pounds."

Officers of *stamp* duties not disqualified from being witnesses.

Sect. 112. "That upon the trial or hearing of any information or complaint exhibited or made under any of the provisions of this act any officer of *stamp* duties, or other person employed by the commissioners of *stamps*, shall be deemed and is hereby declared to be a competent witness, notwithstanding that such officer or person may be the informant or complainant, or may be entitled to or expect any part of any pecuniary penalty, or any remuneration or reward, on the conviction of any offender upon any such information or complaint."

Proceedings to be drawn up according to the forms in Schedule (B).

Sect. 113. "That every complaint, information, summons, conviction, warrant of distress, or commitment, or other such proceeding which shall be had or taken for the recovery of any duty or penalty under the provisions of this act, may be drawn or made out according to the several forms contained in the schedule (B.) hereunto annexed, or to the effect thereof, *mutatis mutandis*, as the case shall require; and every such complaint, information, summons, conviction, warrant, or other such proceeding which shall be so drawn or made out, shall be good and effectual to all intents and purposes whatsoever, without stating the case or the facts or evidence in any more particular manner than is required in and by such forms respectively."

Carriages, horses, &c. chargeable with duties and penalties incurred.

Sect. 114. "That all the carriages, horses and harness, and other articles and things kept, used, or employed by any person, whether licensed under the authority of this act or not, for the purpose of conveying passengers for hire, or for the purpose of being let for hire as aforesaid, shall be subject and liable to and chargeable with all the duties in arrear and owing, or which shall become due and payable from time to time, from or by such person for or in respect of any stage-carriage kept, used, or employed by such person, or for or in respect of any horse let for hire by any such person, and to and with all penalties which may be imposed upon or incurred by such person under this act, and also to and with the costs and expenses of all proceedings which shall or may be had or taken for the recovery of such duties and penalties respectively; and all such carriages, horses, harness, and other articles and things shall, for the purpose of satisfying such duties, penalties, costs, and expenses, or any part thereof respectively, be deemed to be the goods and chattels of such person, and shall be distrained or otherwise seized or taken accordingly, in or into whose custody or possession soever the same shall or may be or come, and by or under what right or title soever the same shall or may be held or claimed: and in case any person in or into whose custody or possession any such carriages, horses, harness, or other articles shall be or come, by or under any means or title whatsoever, shall convert the same to his own use, or shall sell or dispose thereof for the use or benefit of any other person, after notice given by the commissioners of *stamps* or their solicitor, or by any person authorized to collect or receive the duties by this act granted, or any of them, that such carriages, horses, harness, and other articles are subject and liable to or chargeable with any of the duties, penalties, costs, and expenses aforesaid, every person so converting or selling or disposing of

Persons selling or disposing of such carriages, horses, &c. after notice, to be liable to extent of value thereof.

(13). *Post-horses.*

2 & 3 Will. 4, c. 120.

such carriages, horses, harness, or other articles shall be accountable to his Majesty, to the extent of the value of such carriages, horses, harness, or other articles, for the amount of the duties, penalties, costs, and expenses to or with which such carriages, horses, harness, and other articles shall be subject, liable or chargeable, and the same may be sued for and recovered under and by virtue of this act as a debt due to his Majesty accordingly."

In what manner goods distrained under this act shall be sold.

Sect. 115. "That in all cases where any goods or chattels distrained or otherwise seized or taken under any of the provisions of this act are directed to be sold, the same shall be sold by public auction, and notice of the time and place of such sale shall be given to the owner of such goods or chattels, or left at his last known place of abode, three days at least prior to such sale: provided always, that if the owner of any such goods or chattels shall give his consent in writing to the sale thereof at an earlier period than is by this act or shall be by any such notice appointed for such sale, or in any other manner than is by this act directed, it shall be lawful to sell such goods or chattels according to such consent: provided also, that if the owner of such goods or chattels shall at any time before the sale thereof pay or tender to the person who by any warrant or other process shall be directed or authorized to cause such goods or chattels to be sold, the sum which he shall by such warrant or process be directed to levy or raise by the sale of such goods or chattels, together with all reasonable costs and expenses incurred, no sale of such goods or chattels shall be made."

SCHEDULE (A).

Duties on Horses let for Hire, and on Licences to let the same (*a*).

	£ s. d.
For and in respect of every licence to be taken out yearly by every person who shall let any horse for hire in Great Britain .	0 7 6
And for and in respect of every horse let for hire by the mile at the usual rate charged for horses travelling post at the place at which such horse shall be let for hire; (that is to say), for every mile such horse shall be hired or used to travel or go . . .	0 0 1½
And for and in respect of every horse let for hire to go no greater distance than eight miles from the place of letting . .	One fifth part of the sum charged for such letting, or in lieu thereof, at the option of the person letting the horse 0 1 9
And for and in respect of every horse let for hire to go no greater distance than eight miles from the place of letting, where such horse shall not bring back any person and shall not deviate from the usual line of road between the place of letting and the place to which such horse shall be hired to travel or go . . .	0 1 0
And for and in respect of every horse let for hire or used for any period of time less than twenty-eight successive days, or in any other manner than as aforesaid . . . . . And also for and in respect of every horse let for hire for twenty-eight successive days, or for any longer period of time, where any such horse shall be returned in a less period of time than twenty-eight successive days, and shall not be exchanged for another horse in continuation of the same hiring . . .	One fifth part of the sum charged or received, or agreed to be received, on every such letting for hire or using.
Or in lieu of such last-mentioned one-fifth part of such sum (at the option of the person letting the horse), the following duties for every day such horse shall be let for hire or used, or (shall by virtue of any such letting) have been under the direction of the person to whom the same shall be hired; (that is to say,)	
For every day not exceeding three days	0 2 6

(*a*) To this must be added the 5*l.* per cent. imposed on the produce of all Excise duties by 3 Vict. c. 17.

And for every day exceeding three days, and not exceeding thirteen days	0	1	9
And for every day exceeding thirteen days, and less than twenty-eight days	0	1	3

(13). *Post-horses.*

2 & 3 Will. 4, c. 120.

For forms of complaint, summons, warrant of distress, warrant of commitment, &c., under this act, *vide post*, "III. *Proceedings, &c., before Justices*," at the end of title "*Excise*."

(14). Soap.

(14). *Soap.*

[3 & 4 Will. IV. c. 16; 3 & 4 Vict. c. 49; 5 Vict. sess. 2, c. 16.]

As to the annual licence which is required by the 6 Geo. IV. c. 81, to be taken out by makers of soap, see *ante*, p. 644.

Licence to be taken out by makers.

By the 3 & 4 Vict. c. 49, intituled, "*An Act to consolidate and amend the Laws for collecting the Duties on Soap made in Great Britain*," after reciting that the laws for collecting and securing the duties of Excise on soap have become numerous and complicated, and it is expedient to consolidate and amend the same; it is enacted, "That there shall be raised, levied, and collected, allowed, granted, and paid, the duties and drawbacks of Excise following; (that is to say,)

3 & 4 Vict. c. 49.

Duties and drawbacks on soap.

For every pound weight avoirdupois of all hard soap which shall be made in Great Britain, to be paid by the maker thereof, a duty of one penny halfpenny; for every pound weight avoirdupois of all hard soap which shall be brought from Ireland into Great Britain, to be paid by the importer thereof, a duty of one penny halfpenny; for every pound like weight of all soft soap which shall be made in Great Britain, or which shall be brought from Ireland into Great Britain, to be paid by the maker or importer thereof respectively, a duty of one penny (*a*).

For every pound weight avoirdupois of all hard soap, for which the duty in respect thereof shall have been paid or charged, and which shall be duly exported as merchandize from Great Britain to foreign parts, or which shall be shipped as stores of any vessel entitled to ship stores duty-free, or which shall be removed from Great Britain into Ireland, a drawback of one penny half-penny:

For every pound weight avoirdupois of all soft soap which shall be so exported, shipped, or removed, a drawback of one penny (*b*):

Sect. 2. "That the said duties and drawbacks shall be under the management of the commissioners of Excise, and shall be collected, paid, and accounted for in the same manner as other the duties and drawbacks under the management of the said commissioners, and shall be charged, raised, levied, sued for, granted, and paid under the provisions of this act, and the general or special provisions, clauses, enactments, regulations, pains, penalties, and forfeitures contained in any act or acts relating to the collection and management of the revenue of Excise."

Duties and drawbacks to be under management of commissioners of Excise.

Sect. 3. "That every maker of soap shall, before beginning to make or manufacture any soap, or to prepare any materials for the making of soap, make a true and particular entry in writing, signed by such maker, of every soap-house, boiling-house, warehouse, storehouse, shop, room, or other place intended to be made use of by him for the making, preparing, or keeping of soap, or of any materials for making the same, and of every copper and boiler, stating truly the size of each such copper and boiler, and the quantity of soap it is capable of making, half-boil tub, vat, receiver, and other fixed vessel to be used for the boiling, making, or preparing any soap, or any materials for the same, and of every frame to be made use of by him for cleansing hard soap into,

Soap makers to make entry of their premises and utensils.

(*a*) Stat. 3 Vict. c. 17, grants on the amount of the foregoing duties an additional duty of 5*l.* per cent., beginning from May 15th. 1840. (See *post*, sect. 72).

(*b*) Stat. 3 Vict. c. 17, allows on all the foregoing drawbacks an additional drawback, from August 15th, 1840, of 5*l.* per cent.

(14). *Soap.*

3 & 4 Vict. c. 49.

specifying of what material such frame is made, and the length and breadth thereof, by delivering such entry to the officer of Excise in whose survey his soap-house or premises shall be situated; and in every such entry every soap-house, boiling-house, warehouse, storehouse, shop, room, or other place, and every copper, boiler, half-boil tub, vat, receiver, and other fixed vessel, and every frame for cleansing hard soap into, shall be distinguished by a particular number or letter or number and letter or letters; and in default thereof such maker shall, for every unentered soap-house, boiling-house, warehouse, storehouse, shop, room, or place, copper, boiler, half-boil tub, vat, or other such vessel or frame, forfeit two hundred pounds; and every unentered copper, boiler, half-boil tub, vat, receiver, or other vessel, and all soap and all materials found therein, and all soap and materials found in any unentered soap-house, boiling-house, warehouse, room, or place, shall be forfeited."

Soap makers to mark and number their premises and utensils.

Sect. 4. "That every maker of soap shall mark and number, and at all times, on demand in writing of the surveyor or supervisor of Excise, legibly re-mark and re-number, every soap-house, boiling-house, warehouse, storehouse, shop, room, or other place, and every copper, boiler, half-boil tub, vat, and other vessel, and every frame made use of by him for making, cleansing, keeping, or preparing any soap, or any materials for the same, with distinguishing numbers or letters or numbers and letters corresponding to the description thereof in the entry; and every soap-house, boiling-house, warehouse, storehouse, shop, room, or other place, copper, boiler, half-boil tub, vat, or other vessel or frame made use of for the making, cleansing, keeping, or preparing any soap, or any materials for the same, which shall not be so marked or numbered, or which shall not correspond with the description thereof in the entry, shall be deemed and taken to be unentered."

Power of officers to enter soap-houses.

Sect. 5. "That it shall be lawful for every officer of Excise at all times to enter into any soap-house, boiling-house, warehouse, storehouse, shop, or other place made use of by any maker of soap for the making or keeping of any soap, or for the keeping or preparing of any materials for the same, and to remain therein, and to examine and inspect every such soap-house, boiling-house, warehouse, storehouse, shop, or other place, and all coppers, boilers, tubs, pans, and other vessels and utensils and frames therein, and to examine and take an account of all soap from time to time made or making by any such maker, and to take a sample or samples of any soap made by such maker, or of any materials making into or being added to any soap, paying for such sample or samples at the rate of sixpence per pound; and every soap maker into and in whose soap-house and premises aforesaid any officer of Excise shall, on his request or application, be prevented or hindered from entering or remaining, or examining or taking such account, or taking any such sample or samples, shall forfeit two hundred pounds."

Soap makers, if required, to provide sheds or watch-boxes for accommodation of officers.

Sect. 6. "That every soap-maker who shall be thereto required by any order or directions of the commissioners of Excise shall provide and place in his soap-house, in a situation near to his coppers or boilers, to be approved of by the commissioners of Excise, one or more shed or sheds, or watchbox or watchboxes, with glass windows thereto, and seats for the accommodation of the officers of Excise placed over his soap-house or premises: and every maker of soap who, on being required so to provide such shed or sheds or watchbox or watchboxes aforesaid, shall refuse or neglect so to do, shall forfeit two hundred pounds for every refusal or neglect of every such order or directions."

Soap makers to provide covers to their coppers and half boil tubs.

Sect. 7. "That every maker of soap shall, at his own expense, find, provide, and affix and maintain good and sufficient covers to every copper or boiler wherein he shall boil or make any soap, and to every half-boil tub or other vessel in which any foul goods shall be allowed to remain for more than six hours; and every such cover shall be made to fit closely and securely, so as to prevent, when shut down and closed, any access to or removal of the soap or materials or goods in such copper or

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boiler, half-boil tub or other vessel, and shall not have any hole, opening, or perforation therein, save and except small holes not exceeding one-fourth of an inch in diameter in the cover of the copper or boiler wherein the soap shall be boiled or made, to allow the escape of the steam; and every maker of soap who shall refuse or neglect to provide or affix such good and sufficient cover as aforesaid to any such copper, boiler, half-boil tub, or other vessel, or who shall have any hole or perforation in such cover, save and except as aforesaid, shall forfeit two hundred pounds, together with all the goods or materials which shall be found in any such copper, boiler, half-boil-tub, or other vessel."

Soap makers to provide proper fastenings for securing covers of coppers and covers of tubs and vessels.

Sect. 8. "That every maker of soap shall, at his own expense, provide and affix and maintain good and sufficient fastenings for fastening and securing the cover of every copper, boiler, half-boil tub, or other vessel for which a cover is by this act required to be provided, and proper locks and keys for locking and securing such fastenings shall be provided by the respective supervisors and surveyors of Excise at the expense of such maker; and within three hours, if the copper or boiler shall be of a size capable of making ten tons of soap or more, and if of a less size within two hours, after the fire is drawn or the steam turned off, the cover of such copper or boiler, and the cover of every half-boil tub or other vessel containing any foul goods or materials taken from or to be returned into any copper or boiler, shall be securely fastened, locked, and secured by the officer of Excise; and every copper or boiler, half-boil tub, and other such vessel as aforesaid, shall be at all times kept securely fastened, locked, and secured by the officer of Excise, except when such copper or boiler, half-boil tub, or other such vessel shall be at work or in use, or shall be opened for repairing the same, or for the inspection of an officer of Excise; and every soap-maker who shall refuse or neglect to provide and affix such good and sufficient fastenings as aforesaid, or who shall obstruct or hinder any officer of Excise in locking and securing the same, shall forfeit two hundred pounds, together with all soap or materials found in any such copper, boiler, half-boil tub, or other vessel to which such fastenings shall not be affixed."

Coppers, &c. to be kept locked.

Coppers not to have any pipes or cocks or openings in them.

Sect. 9. "That no maker of soap shall have or keep any pipe or other conveyance to or from any copper or boiler made use of by him in the boiling or making of soap, nor shall have any cock or perforation or hole in the side or curb or bottom of any such copper or boiler, nor shall have any part of the curb moveable, nor shall use any syphon, crane, or trinket, but shall take out all lees, soap, and other ingredients contained in such copper or boiler by a moveable pump and open shute, or by pails or ladles only, on pain of every maker acting contrary hereto forfeiting two hundred pounds."

For allowing pipes for boiling soap by

Sect. 10 provides and enacts, "That nothing hereinbefore contained shall extend to prevent any maker of soap from having a pipe entering into and coils of pipe fixed in his copper or boiler, for the purpose of conveying steam into such copper or boiler, and thereby boiling or making his soap, so that the same be one continuous pipe leading from the boiler or steam main, by which the steam shall be supplied directly into the soap copper or boiler, and being externally visible throughout its course, and not having any opening or outlet for the steam into the soap copper or boiler but by perforations, not exceeding one eighth of an inch in size, pierced in some part of that portion of the pipe, or coils of pipe, which shall be placed within the soap copper or boiler."

When soap maker is desirous of having the cover of copper, &c. opened to make soap he shall give notice to officer who shall attend.

Sect. 11 enacts, "That whenever any maker of soap shall de desirous of having the cover of his copper or boiler, or of any half-boil tub or other vessel, the cover of which shall be locked and secured, opened for the purpose of boiling soap, or preparing the materials for the same, such maker shall give to the proper officer of Excise, if delivered between the hours of six of the clock in the morning and six of the clock in the evening six, and if delivered at any other time twelve hours' notice thereof

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in writing, specifying in such notice the particular copper or boiler, half-boil tub, or vessel required to be opened; and the officer of Excise shall, at the time specified in such notice, attend and unlock the fastenings of the cover of the copper, boiler, half-boil tub, or other vessel, and allow the same to be opened for the purpose aforesaid; and if such maker shall not, within three hours after such fastenings being unlocked, light the fire under or turn the steam on the copper or boiler, or remove the goods from the half-boil tub or other vessel, such officer shall, at the expiration of such time, replace and relock and secure the fastenings on the covers on the said copper or boiler, half-boil tub, or other vessel, and the same shall not again be opened without another and like notice being subsequently delivered."

Officers of Excise may at any time unlock copper, &c. and require it to be open for inspection.

Sect. 12, "That it shall be lawful for any officer of Excise surveying any soap-house at any time to unlock the fastenings of any copper or boiler, half-boil tub, or other vessel, and to require the cover thereof to be opened for the purpose of his examining whether any soap or materials are in such copper or boiler, half-boil tub, or other vessel, and to inspect and examine any soap or materials which may be therein; and every maker of soap, who, on being required by any such officer so to do, shall refuse to open the cover of any copper or boiler, half-boil tub, or other vessel, or again to close the same, shall forfeit one hundred pounds."

Notice for repairs.

Sect. 13. "That when any maker of soap shall be desirous of having any copper or boiler, half-boil tub, or other vessel opened for the purpose of the same being repaired, such maker shall give to the proper officer of Excise, if delivered between the hours of six of the clock in the morning and six of the clock in the evening six, and if delivered at any other time twelve hours' notice thereof in writing, specifying in such notice the particular copper or boiler, half-boil tub, or vessel requiring repair; and thereupon the officer of Excise shall attend at the time specified in such notice, and shall unlock and open the fastenings of the cover of such copper or boiler, half-boil tub, or other vessel; and such maker shall in the presence of the officer forthwith cause all the soap, materials, or goods, if any, which shall be in such copper or boiler, half-boil tub, or other vessel, to be removed and turned over into some other copper or boiler, half-boil tub, or other vessel, which shall be immediately fastened, locked, and secured by the officer, unless it shall be a copper then boiling; and as soon as the repairs required shall be completed, the maker of soap shall give notice thereof in writing to the officer of Excise, who shall thereupon attend, and fasten, lock, and secure the cover of the copper or boiler, half-boil tub, or other vessel so repaired, unless such maker shall have given such notice as hereinbefore required for having the cover of the copper, half-boil tub, or other vessel opened to boil soap or materials; and all soap, goods, and materials which shall be found in any such copper or boiler, half-boil tub, or other vessel, before such notice of the repairs being completed shall have been given, shall be forfeited; and if any soap, materials, or goods which may be in any copper or boiler, half-boil tub, or other vessel, shall not be begun to be removed and turned over within two hours after such copper or boiler, half-boil tub, or other vessel shall be opened under such notice first as aforesaid, such notice shall be void, and the officer of Excise shall require the cover thereof to be reclosed, and shall replace the fastening, and relock and secure the same, and shall not again unlock or open the same for the purpose of repair until another and like notice shall have been subsequently given."

Notice to be given of removal of goods from one copper to another.

Sect. 14. "That whenever any maker of soap shall be desirous of removing any materials making into soap or foul goods from any copper or boiler in which the same may be contained into any other copper or boiler, such maker shall give notice in writing of such his intention to the officer of Excise, if delivered between the hours of six of the clock in the morning and six of the clock in the evening six, and if at any

other time twelve hours, before such intended removal, specifying in such notice the particular copper or boiler, or coppers or boilers, in which such materials or foul goods shall then be contained, and the particular copper or boiler or coppers or boilers into which the same are to be removed, and the particular day and hour when such removal is to take place; and such notice having been delivered, the proper officer of Excise shall attend at the time mentioned therein, and shall see such materials or foul goods removed in his presence from the one copper or boiler into the other accordingly; and every maker of soap who shall remove any materials or foul goods from any copper or boiler in which the same may be into any other copper or boiler, without having given such notice, shall forfeit one hundred pounds; and if any maker of soap, having given such notice, shall not within one hour after the time specified therein, or the attendance of the officer in consequence, begin to remove such materials or foul goods, such notice shall be null and void, and another like notice shall be subsequently given: Provided always, that if the proper officer of Excise shall be on survey or be present in the soap-house so as then to attend and see such removal, one hour's previous notice in writing to such officer of such intended removal shall be sufficient."

Officer to attend, and removal to take place in his presence.

Sect. 15 provides and enacts, "That in case in the making of any soap any copper or boiler containing soap, or materials making into soap, or foul goods, shall burst, or by accident become damaged or injured, so as to render necessary the removal of such soap or materials or foul goods into some other copper or boiler, half-boil tub, or other vessel, it shall be lawful for the maker of soap in whose premises such accident shall happen, on giving immediate notice to the officer of Excise thereof, to remove all the soap or materials or foul goods from and out of the copper or boiler which shall have so burst or become damaged or injured, if the same shall then be open, into any other copper or boiler, half-boil tub, or vessel in the soap-house of such maker; and the officer of Excise to whom such notice shall be delivered shall forthwith attend and unlock the fastenings, if such copper or boiler shall be locked and secured, and see such soap or materials or goods removed in his presence, or if removed before his attendance shall see the copper or boiler, half-boil tub, or vessel into which the same shall have been removed, and shall forthwith lock and secure the fastenings thereof, unless the same shall be a boiling copper."

In case of accident goods may be immediately removed.

Sect. 16 enacts, "That it shall be lawful for any surveyor or supervisor, or other superior officer of Excise, if he shall at any time suspect any copper or boiler to have any hole or opening therein, or to be so constructed in any way as to allow of soap being privately removed therefrom, to order and direct such copper or boiler, immediately after a cleanse of soap shall have been made therefrom, to be perfectly cleaned out, or so much of the goods remaining therein to be taken out as he shall deem necessary to be removed therefrom, for the purpose of enabling him to examine and search such copper or boiler; and if upon such examination and search any hole or opening shall be discovered therein, such hole or opening shall be deemed to have been wilfully made for the purpose of privately conveying away soap, and the maker of soap shall forfeit the penalty for having a hole or opening in his copper or boiler, unless he shall prove the same to have been made by bursting or other accident, and that he had given notice thereof in writing to the officer of Excise on his next survey after such accident; and every maker of soap who shall refuse to clean out any copper or boiler, or to remove or take out any goods therefrom, on being required so to do by any supervisor or surveyor, or other superior officer of Excise, at any time after a cleanse of soap shall have been taken from the same, shall forfeit two hundred pounds."

Surveyors or supervisor may direct a copper to be cleaned out for examination at any time after a cleanse.

Sect. 17. "That every maker of soap in whose soap-house any covers, fastenings, locks, or keys shall be provided for securing any copper or boiler, or any half-boil tub, or other vessel required to be secured under

Covers, fastenings, locks, and keys to be altered and repaired when re-

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quired at expense of soap maker.

the provisions of this act, shall from time to time and at all times, when required so to do by the surveyor or supervisor or other superior officer of Excise, immediately alter, repair, and amend such covers and fastenings respectively, and the surveyor or supervisor of the district may, at all times as to him may seem necessary, change and remove any locks or keys, and replace the same with other locks and keys; and every maker of soap who shall refuse or neglect to pay for any lock or key at any time provided by the surveyor or supervisor of Excise for locking or securing any copper or boiler, or any half-boil tub, or other vessel required by the provisions of this act to be fastened, locked, and secured, either when first supplied or on any change of such lock or key, or who shall, for the space of three days after being required so to do by any notice in writing from the surveyor or supervisor of the district, neglect or refuse to alter, amend, or repair any cover or fastenings as aforesaid, shall forfeit one hundred pounds."

Penalty on gaining access to coppers so secured, or damaging fastenings.

Sect. 18. "That if any maker of soap shall, by any false or duplicate key, or by any means, art, or contrivance whatsoever, open any lock or fastening, or open or gain access to any copper or boiler, or to any half-boil tub, or other vessel, after the same shall have been fastened, locked, and secured by the officer of Excise, before the same shall be again unlocked and opened by the officer of Excise under such notice and at the times prescribed by this act, or shall wilfully break, damage, or injure any cover or other fastening, lock, or key, or any seal or label for securing any lock or fastening provided or affixed by any officer of Excise, or shall provide, affix, or make use of, or procure to be provided, affixed, or made use of, any false or deceptive cover or fastening, or use any art, means, or device whereby the securities intended by this act shall in any manner be defeated, such maker of soap shall in any such case forfeit three hundred pounds."

Notice for cleansing soap.

Sect. 19. "That every maker of soap shall, before beginning to cleanse or take any soap from or out of the copper or boiler in which the same shall have been boiled or made, give to the officer of Excise six hours' notice in writing of the particular day and hour when such maker intends to cleanse or take such soap out of the copper or boiler, and the particular copper or boiler from which the soap is to be cleansed or taken, and at the time specified in such notice the officer of Excise shall attend in pursuance thereof; and as soon as the maker of soap shall be ready to begin to cleanse, and shall require him so to do, such officer shall unlock the fastenings of the copper or boiler, and allow the same to be opened; and if such maker shall not, within three hours after the officer shall attend, require him to unlock the fastenings, or shall not begin to cleanse and take the soap out of the copper or boiler within one hour after the fastenings thereof shall be unlocked, such notice shall be null and void, and the copper or boiler, if opened, shall be again closed and fastened, locked and secured, and shall not be again opened, except on another and like notice being subsequently delivered; and every maker of soap who shall begin to cleanse or take any soap out of any copper or boiler without having given such notice as aforesaid shall forfeit two hundred pounds, and all the soap cleansed or taken out."

No soap to be cleansed but between certain hours.

Sect. 20. "That no maker of soap shall cleanse or take any soap from or out of any copper or boiler between the hours of seven of the clock in the evening from the thirtieth day of September to the first day of April, and eight of the clock in the evening from the thirty-first day of March to the first day of October, and six of the clock on the following morning, and every notice which shall be given for cleansing any soap within the said hours shall be null and void."

Description of frames to be made use of in cleansing hard soap.

Sect. 21. "That no frame for cleansing or putting hard soap, whether perfect or imperfect, into, when taken out of the copper or boiler wherein the same shall have been boiled or made, shall be made use of by any maker of soap, except such frames only as shall be specified and

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described in the entry of such maker, and be regularly numbered and marked, and all such frames shall be made and constructed in manner following; (that is to say), every such frame shall be made of wood or of iron or slate, and of no other material, except by permission of the commissioners of Excise, and shall be of a rectangular shape, forty-five inches in length and fifteen inches in breadth; and if such frame shall be made of wood, the bottom, sides, and ends thereof shall respectively be of the thickness of two inches at the least, and the sides and ends of each and every of the lifts thereof shall be permanently mortised and nailed, or permanently dovetailed and nailed together; and if such frame shall be of iron or slate, the bottom, sides, and ends thereof shall respectively be of such thickness as to prevent the same from giving or yielding to the weight or pressure of the soap cleansed into the same; and if any soap shall be cleansed into any vessel or utensil, or into any frame other than as hereinbefore directed, or if any frame of a size or construction other than hereinbefore prescribed, shall be found on the premises or in the possession of any maker of soap, except as hereafter provided, every such vessel and utensil and frame, and all soap therein, shall be forfeited, and the maker of soap so offending shall forfeit two hundred pounds: Provided always, that it shall be lawful for any maker of soap to make use of any frame used by him before the passing of this act, although such frame may not be of the length or breadth hereinbefore prescribed, so that such frame be not less than forty-four inches in length by fourteen inches in breadth, and be in other respects constructed in conformity with the directions of this act."

No frame to be made use of until dimensions have been ascertained by officer, and not afterwards to be altered.

Sect. 22. "That no frame shall be made use of by any maker of soap for cleansing any hard soap into until the same shall have been produced to the officer of Excise, and until such officer shall have ascertained the dimensions thereof, and marked such frame; and every maker of soap who shall make use of any frame before the dimensions thereof shall have been so ascertained, or who shall alter the dimensions thereof after the same shall have been ascertained, shall forfeit one hundred pounds, together with such frame, and all soap contained therein."

No intermediate vessel to be allowed except pails or a pan capable of containing an entire frame.

Sect. 23. "That all hard soap shall be cleansed from the copper or boiler in which the same shall have been boiled or made directly into the frame or frames in which the same is to be gauged and taken account of by the officer, as after mentioned, without being put into any intermediate frame, pan, vessel, or utensil, save and except the utensils for conveying the same from the copper or boiler to the frame, or into a pan or vessel of capacity sufficient to fill the whole of a frame, and which shall be filled to the full amount required to fill a frame, and from which the soap shall be moved to the frame by the ordinary utensils, and of which pans or vessels no more than two shall be in use at the same time on any cleanse of hard soap; and all hard soap which shall be put into any intermediate pan, vessel, or utensil, save and except as aforesaid, shall be forfeited."

Hard soap to be cleansed at not less than depth of forty five inches in frame.

Sect. 24. "That every maker of soap shall, in cleansing his hard soap, fill each frame with soap to the height or depth of forty-five inches at the least from the bottom of such frame, save and except the last frame, where a sufficient quantity of soap for the purpose shall not remain after filling all the other frames to the said height of forty-five inches, and every maker of soap who shall cleanse his hard soap into any frame, except the last as aforesaid, in any less quantity than as aforesaid, shall forfeit fifty pounds."

Times within which hard soap must be cleansed.

Sect. 25. "That every maker of soap who shall begin to cleanse or take any hard soap out of any copper or boiler shall and he is hereby required to cleanse and put the whole thereof into the frames within the times hereinafter mentioned, according to the quantity cleansed or taken out; (that is to say), if the quantity of soap boiled and made in any copper or boiler, and cleansed and taken out of the same, shall not

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exceed three tons in weight by the gauge thereof, the whole of such soap shall be cleansed and put into the frame or frames within the space of two hours from beginning to take the same out of the copper or boiler; if the quantity shall exceed three tons, and not exceed six tons, three hours; and if the quantity shall exceed six tons, then within twenty minutes for each additional ton cleansed; and every maker of soap who, having commenced to cleanse or take any hard soap out of any copper or boiler, shall not cleanse and put the whole thereof into a frame or frames within such time as aforesaid, shall forfeit fifty pounds."

When after a cleanse any foul goods shall be left in copper, soap maker to return all fob and skimmings, and add fresh materials.

Sect. 26. "That when after any cleanse of hard soap any residue of materials shall be left in the copper or boiler the maker of soap shall, as soon as the cleanse of the soap into the frames shall be finished, or within one hour thereafter, return and put into such copper or boiler all the fob and skimmings which shall have been taken out of the same, and also all the soap which before the gauging thereof may have run out of any frame into which the same shall have been cleansed, and shall add fresh tallow, grease, or oil, in the proportion of one hundred weight of tallow, grease, or oil for every ton of soap which such copper or boiler shall be stated in the entry of the maker to be capable of making, and shall immediately re-melt such tallow, grease, or oil in the presence of the proper officer of Excise, or shall add thereto, in the presence of the officer, hot lees or other goods from a boiling copper sufficient to make such residue unfit for framing as soap, on pain of forfeiting for every refusal or neglect so to do one hundred pounds: Provided always, that no maker of soap shall incur the said penalty in any case where the residue left in such copper or boiler shall be turned over in the presence of the officer of Excise into another boiling copper or boiler, or where the surveyor or supervisor or other superior officer of Excise shall require the copper or boiler to be cleaned out, or any part of the goods to be removed therefrom for examination."

Proviso.

All hard soap to be charged with duty by gauge.

Sect. 27. "That all hard soap shall for the charging the duty thereon be taken account of and the quantity thereof ascertained by the officer of Excise by gauge whilst the same is in the frame or frames, after being cleansed, and before being cut up and removed from the frame or frames; and for the purpose of taking such account it shall be lawful for the officer of Excise to take a gauge of all such hard soap immediately on the same being cleansed or put into the frame, and from time to time to repeat such gauge until the soap shall be cut up and removed from the frames; and the greatest quantity of soap found or ascertained on any such gauge shall be the quantity of soap to be charged with duty."

In gauging hard soap made from usual materials 28 cubic inches when hot, and 27·14 cubic inches when cold, to be taken as pound weight avoirdupois.

Sect. 28, reciting that under the laws hitherto in force the officers of Excise have been in the practice of ascertaining the quantity of hard soap to be charged with duty by gauging the same in the frames on a calculation that twenty-eight cubic inches of such soap when hot, and twenty-seven cubic inches and fourteen hundred parts of a cubic inch of such soap when cold, were equal to or would weigh one pound avoirdupois: and that the correctness of such charge having been disputed, and doubts raised, experiments have been made by persons of science on the specific gravities of various samples of hard soap taken on the premises of various makers of soap in Great Britain, and by the result of such experiments it has been ascertained that as an average on all hard soap made by the ordinary processes from the usual and ordinary materials of tallow, kitchen-stuff, oil, or other animal, fish, or vegetable fat, tallow, or other grease, or oil, rosin, and alkali, or any mixture thereof, the said calculation hitherto adopted is a fair and just one; enacts, "That for the purpose of calculating the number of pounds weight by gauge for the charge of duty, twenty-eight cubic inches of hard soap when hot, and twenty-seven cubic inches and fourteen hundredth parts of a cubic inch of such soap when cold, shall be deemed and

taken to be a pound weight avoirdupois of all hard soap of whatever description, made from the usual and ordinary materials of tallow, kitchen-stuff, oil, or other animal, fish, or vegetable fat, tallow, or grease, or oil, rosin, and alkali, or any mixture thereof; and every maker of hard soap shall be charged with duty on the quantity so ascertained of all hard soap made by him accordingly."

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Allowance of mottled soap.

Sect. 29, providing that whereas mottled soap is cleansed into the frame with the greater proportion of the lees therein, which are thereby included in the bulk of soap when gauged, but which subsequently subside, and are separated from the soap with portions of waste soap; enacts, "That the officers of Excise shall and they are hereby required, in charging the duties on hard soap, to allow to the respective makers of mottled soap, in their returns or accounts of the respective quantities of hard soap made by such respective makers, one pound in every ten pounds of mottled soap which such officers shall charge upon the respective makers thereof."

What soap shall not be deemed mottled soap and not entitled to allowance.

Sect. 30 provides and enacts, "That no soap shall be deemed or allowed to be mottled soap, or entitled to the said allowance of one pound in every ten pounds hereby given, which shall be made of or have added to it any other than the usual and ordinary materials, or which shall have remained in the copper more than six hours after the same shall have ceased to boil, and before being begun to be cleansed, or which shall not be cleansed into the frame within six hours after the delivery of the declaration hereinafter required to be given, or which during the cleanse, or when cleansed, shall be crutched or have any liquor or matter added thereto, or which shall not, before being cut up, deposit lees, and be in all respects such soap as was commonly known as mottled soap before the passing of this act."

When soap is made in a high-pressure boiler and not fitted 26·76 cubic inches when hot and 25·91 cubic inches when cold to be a pound.

Sect. 31 enacts, "That when any maker of soap shall boil or make his hard soap from the usual and ordinary materials only in a high-pressure boiler, and shall cleanse the soap so made without fitting or finishing the same in any other copper or boiler, twenty-six cubic inches and seventy-six hundredth parts of a cubic inch of such soap when hot, and twenty-five cubic inches and ninety-one hundredth parts of a cubic inch when cold, shall, in gauging such soap, be deemed and taken to be a pound of soap, and the maker thereof shall be charged with duty accordingly."

When other than usual materials are used 24·04 cubic inches when hot, and 23·30 cubic inches when cold to be a pound.

Sect. 32. "That in all cases where any maker of soap shall add to his hard soap of any description, or manufacture the same with, any silicious or earthy matter, or any other substance or matter other than the usual and ordinary materials commonly used in the manufacture of hard soap, twenty-four cubic inches and four hundredth parts of a cubic inch of such soap when hot, and twenty-three cubic inches and thirty hundredth parts of a cubic inch when cold, shall, in gauging such soap, be deemed and taken to be a pound weight avoirdupois, and the maker thereof shall be charged with duty accordingly."

Soap maker to deliver declaration whether soap to be cleansed is made from ordinary materials or has had any earthy matter added to it.

Sect. 33. "That every maker of soap shall, either at the time of giving his notice to cleanse or before the time of cleansing any hard soap, deliver to the officer of Excise a declaration in writing, in such form as the commissioners of Excise shall direct, specifying whether the soap to be cleansed is soap made from the ordinary materials only, and if made from the ordinary materials whether the same is mottled soap or not, or whether the same is soap made with or to which has been or is to be added any silicious or earthy or other matter than the ordinary materials; and every maker of soap who shall make any false or untrue declaration in such respect shall forfeit one hundred pounds; and all hard soap, in respect of which such declaration shall not be delivered, shall be deemed and taken to be soap made with or to which has been added silicious or earthy matter, and shall be charged with duty accordingly."

Officers to take

Sect. 34. "That it shall be lawful for any officer of Excise, who shall

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Samples of hard soap when cutting up.

In case samples do not agree with declaration.

be present when any hard soap shall be cutting up, to take from each frame thereof a cake or bar of the soap contained therein, as a sample or samples of the soap in such frame or frames, paying for the same when taken sixpence per pound; and if any hard soap shall be found, on examination of the sample thereof so taken, within forty-eight hours after the taking thereof, to be of a greater specific gravity than the gravity of 1·05, or if boiled or made in a high-pressure boiler, and not fitted or finished in another copper or boiler, of a greater specific gravity than 1·08, water being taken as unity at a temperature of sixty-two degrees, such soap shall be gauged, and taken account of, and charged with duty as soap made with or to which has been added silicious or earthy matter; and if, upon analysis thereof at any time, such sample of soap shall be found to contain silicious or earthy or other matter, and shall have been declared to be soap made from ordinary materials only, the maker thereof shall forfeit the penalty by this act imposed for a false or untrue declaration."

Time within which hard soap is to be cut up and removed from frames.

Sect. 35. "That every maker of soap who shall have cleansed any hard soap into any frame or frames to the depth of fifty inches or under fifty inches shall cut or divide all such soap into bars, and remove the same and every part thereof from the frame or frames within six days (Sunday exclusive) after the same shall have been cleansed, if such frame or frames shall be made of wood, and within four days (Sunday exclusive) if such frame or frames shall be made of iron or slate; and when any such maker shall have cleansed any hard soap into any frame or frames in any larger quantity than to the depth of fifty inches, such maker shall cut or divide such soap into bars, and remove the same and every part thereof from the frame or frames, if such frame or frames shall be made of wood, within seven days (Sunday exclusive), and if such frames shall be made of iron or slate, then within five days (Sunday exclusive) after such soap shall have been cleansed, on pain of forfeiting the sum of fifty pounds for every omission or neglect."

Scraps and parings to be returned into copper.

Sect. 36. "That immediately after any soap shall be cut up and removed from the frame, all the scraps and parings and pieces of soap, not being bars or part of a bar, shall be returned into a boiling copper; and every maker of soap who shall refuse to return any such scraps or parings or pieces into the copper, when required so to do by any officer of Excise, shall forfeit fifty pounds, and all such scraps, parings, and pieces."

Hard soap not to be sold or sent out in any other form than in bars or parts of bars.

Sect. 37. "That no hard soap shall be sold, sent out, or removed by any maker of soap in any other form or shape than in bars, not exceeding fifteen inches in length, except bars packed for removal to Ireland on drawback, or in parts of bars of not less than one pound weight each piece, except cakes of soap, moulded and stamped; and every maker of hard soap who shall sell or send out or remove from his soap-house any scraps or parings of hard soap, or any hard soap in any other form or shape than in such bars or parts of bars, except as aforesaid, shall forfeit one hundred pounds, and all such scraps or parings, and all hard soap in any other form or shape or of less weight than as aforesaid, except as aforesaid, which shall be sold, sent out, or removed by any maker of soap, or shall be found in possession of any person, shall be forfeited."

Soft soap to be cleansed only into barrels, half-barrels, firkins, or half firkins of a certain size.

Sect. 38. "That no soft soap shall be cleansed from the copper or boiler in which the same shall be boiled or made into any other cask, tub, vessel, or utensil whatsoever, than barrels or half barrels, firkins or half firkins, of the respective sizes following; (that is to say,) every barrel shall when filled contain two hundred and fifty-six pounds of soft soap, every half barrel one hundred and twenty-eight pounds, every firkin sixty-four pounds, and every half firkin thirty-two pounds avoirdupois weight, besides the weight or tare of the cask; and every maker of soap who shall cleanse any soft soap into any barrel, half barrel, firkin, or half firkin of any other size than as aforesaid, or into

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any other cask, tub, vessel, or utensil, shall forfeit two hundred pounds, and all the soft soap which shall be so cleansed shall be forfeited."

At time of cleansing soft soap the soap maker to produce all barrels, firkins, &c with weight properly marked.

Sect. 39. "That at the time specified in the notice for cleansing any soft soap the maker of such soap shall produce to the officer of Excise all the barrels, half barrels, firkins, or half firkins, into which such soap is to be cleansed, with the weight or tare of each such barrel, half barrel, firkin, and half firkin truly and legibly marked in ink or paint, or cut or branded thereon; and the officer of Excise shall thereupon proceed to take an account of such barrels, half barrels, firkins, and half firkins, by weighing the whole, or such of them as such officer shall select: and every such barrel, half barrel, firkin, or half firkin, which shall be produced to any officer of Excise without the weight or tare thereof being so legibly marked or cut or branded thereon, or having the weight or tare untruly marked thereon, shall be forfeited, and the maker of soap shall in respect thereof forfeit five pounds; and if any maker of soap shall, at any time after any barrel, half barrel, firkin, or half firkin shall have been produced to any officer of Excise, erase or alter the weight or tare marked or cut or branded thereon, such maker shall forfeit five pounds, and also the barrel, half barrel, firkin, or half firkin, the tare on which shall have been altered, together with all soap contained therein."

Times within which soft soap must be cleansed.

Sect. 40. "That every maker of soap who shall begin to cleanse or take any soft soap out of any copper or boiler shall and he is hereby required to cleanse and take the whole of the soap boiled or made in such copper or boiler from and out of the same, and to cleanse and put the whole thereof into the barrels, half barrels, firkins, or half firkins prepared to receive the same, within the times hereinafter mentioned, according to the quantity cleansed or taken out; (that is to say), if the copper or boiler shall contain less than two thousand five hundred and sixty pounds weight of soft soap, the whole of such soap shall be cleansed and put into the barrels, half barrels, firkins, or half firkins within one hour from beginning to take the same out of the copper or boiler, if the quantity shall be two thousand five hundred and sixty pounds weight and less than five thousand one hundred and twenty pounds weight, within two hours, if the quantity shall be five thousand one hundred and twenty pounds weight or more, within three hours; and every maker of soap who, having commenced to cleanse and take any soft soap out of any copper or boiler, shall not take the whole of such soap out of such copper or boiler, and put the same into the barrels, half barrels, firkins, or half firkins, within such time as aforesaid, shall forfeit fifty pounds."

Soft soap to be weighed for charge of duty.

Sect. 41. "That within three days (Sunday exclusive) after the cleanse of any soft soap shall be completed and finished, the officer of Excise shall weigh and take an account of all such soft soap; and if upon such weighing any barrel, half barrel, firkin, or half firkin of soap shall be found to exceed the weight by this act prescribed as the quantity which each barrel, half barrel, firkin, and half firkin shall contain, it shall be lawful to take such additional weight from such barrel, half barrel, firkin, or half firkin, and to add the same to any barrel, half barrel, firkin, or half firkin, which shall be found to weigh less than the weight hereinbefore prescribed, so that the weight of each respectively shall be the proper weight hereinbefore directed, at which weights all soft soap shall be charged with duty; and if upon any weighing any quantity of soft soap shall remain less than a half firkin, the same shall not then be charged with duty, but shall be weighed and taken account of by the officer of Excise, and shall be put by to be brought forward and filled up and charged on the next cleanse and weighing of soft soap; and every maker of soap who shall remove, deliver, or send away any soft soap before the same shall have been weighed and taken account of by the officer of Excise, or in any other cask, vessel, or utensil, or at any

Penalty on removal before weighing.

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other weight, than as by this act prescribed, shall forfeit two hundred pounds, together with all such soap."

Surveyor or supervisor may re-weigh soft soap at any time.

Sect. 42. "That it shall be lawful for any surveyor or supervisor or other superior officer of Excise, at any time, if he shall see fit, to re-weigh any soft soap in the possession of any maker of soap; and if upon such re-weighing any barrel, half barrel, firkin, or half firkin of soft soap shall be found to weigh more than the weight hereinbefore prescribed respectively, such barrel, half barrel, firkin, or half firkin, with the soap therein, shall be forfeited, and the maker of soap shall also in respect of the same forfeit five pounds."

Makers of soft soap to provide scales and weights, and permit officers of Excise to use them, and shall assist them.

Sect. 43. "That every maker of soap shall provide and keep just and sufficient scales and weights in his soap-house, and shall also permit and suffer any officer of Excise to use the same, and with his workmen and servants shall aid and assist, when required by any officer of Excise, in weighing any barrels, half barrels, firkins, and half firkins, for ascertaining the true weight or tare thereof, and in weighing and re-weighing any soft soap which any officer of Excise shall at any time require to weigh or re-weigh, or in weighing any materials, to ascertain the proportion thereof to be added to the copper after a cleanse of hard soap, or in weighing any soap which any officer of Excise shall, on suspicion, and in order to detect any fraud, require to weigh; and every such maker who shall refuse or neglect to keep such scales or weights, or either of them, or who shall not permit any officer of Excise to use, or shall refuse to aid and assist such officer when required so to do in using the same, shall forfeit one hundred pounds; and every maker of soap who shall, in the weighing of any barrel, half barrel, firkin or half firkin, or in the weighing or re-weighing of any soft soap, provide or produce any false scales or weights, or who shall make use of, or procure or suffer to be made use of, any force or violence, or shall practise any art, device, or contrivance, by which any officer of Excise may be hindered or prevented or deceived in taking the true account of the weight of any barrel, half barrel, firkin, or half firkin, or of any soft soap therein, or in charging the true amount of duty on such soap, shall forfeit two hundred pounds, together with all such false scales and weights, and every such barrel, half barrel, firkin, and half firkin, and all such soap."

Officers of Excise to make periodical returns of duty charged on each soap maker, who shall pay amount, or forfeit double duty.

Sect. 44. "That every officer of Excise under whose survey any maker of soap shall be, or any other officer who shall be appointed so to do, shall, at the expiration of every six weeks, or at such other times as the commissioners of Excise shall direct, make out and deliver to the commissioners of Excise an account or return in writing of the quantity of soap, and whether hard soap or soft soap, made by such maker, and for which he shall have become chargeable with duty in such preceding six weeks or other period, and of the duty payable thereon, according to the weight of such soap, as ascertained in manner hereinbefore directed, and shall also leave a copy of such account or return with such maker of soap; and the account or return of such officer shall be a charge on every such maker of soap, who shall pay and clear off the duty appearing by such account or return to have been become due within six days after such account or return shall be made, or in default thereof shall forfeit double the amount of such duty."

Soap maker adding to soap after being charged to forfeit 100*l.* and the soap.

Sect. 45. "That every maker of soap who shall, after any soap shall have been taken account of and charged with duty, add to or mix with such soap any other soap, or any water or lees, or any substance or other matter by which the weight thereof may be increased, shall forfeit one hundred pounds, and all such soap."

Penalty on concealing soap to evade duty.

Sect. 46. "That every maker of soap who shall hide or conceal, or cause to be hidden or concealed, or shall remove or convey away, or deposit, or cause or suffer to be removed, conveyed away from, or deposited in any place, any soap, to evade the duty chargeable thereon, or any part of such duty, shall, over and above every other penalty to

which he may by so doing become subject, forfeit five hundred pounds, and all such soap shall also be forfeited."

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For allowing experiments in making soap.

Sect. 47. "That when any maker of soap shall be desirous of making any experiment in the manufacture of soap, and shall make application to the commissioners of Excise for permission so to do, without being charged with duty on the soap, in case of such experiment not succeeding, it shall be lawful for the said commissioners, if they shall see fit, to grant such permission under such regulations as they may direct, and in such case all the soap which shall be so made shall be cleansed into a frame or frames, barrels, half barrels, firkins, or half firkins (as the same may be hard or soft soap), separate and apart from, and shall be kept separate and apart from, all other soap, and shall be duly taken account of by the officers of Excise for the charge of the duty thereon; and such maker of soap shall, within eight days after such soap shall have been cleansed, elect whether he will retain such soap in its then manufactured state, and pay the duty charged thereon, or whether he will return the same into the copper or boiler to be re-manufactured; and in case such maker shall determine to re-manufacture such soap he shall, within the time aforesaid, give a notice in writing of such his intention to the officer of Excise, specifying in such notice the particular copper or boiler into which and the day and hour when such soap is to be returned, and the supervisor or surveyor of Excise shall thereupon attend and weigh all such soap, and see the same returned into the copper or boiler specified in the notice, and shall certify the same to the commissioners of Excise, and thereupon the said commissioners may remit the duty charged on such soap."

For allowing use of new or improved coppers or frames, although not made in conformity with act.

Sect. 48. "That it shall be lawful for the commissioners of Excise, if they shall see fit, upon the application of any maker of soap, to allow and permit, under such conditions, rules, and regulations as they shall prescribe, any new or improved copper or boiler, or other vessel, or any frame or other utensil to be made use of in the boiling or making or cleansing of soap, although such copper or boiler, or other vessel or frame, or utensil, may not be in construction or otherwise in conformity with the enactments of this act: provided always, that every such copper, boiler, or other vessel or frame, or utensil, in respect of which such permission shall be granted, shall be duly entered with the officers of Excise, and a description thereof given; and all fastenings which may be required to be affixed thereto shall be deemed and taken to be fastenings provided under this act; and if any maker of soap to whom any such permission shall be granted shall neglect or refuse to obey, or shall not observe any of the conditions, rules, or regulations under which such permission shall be granted, such maker shall forfeit two hundred pounds, and the permission so granted shall, if the commissioners of Excise shall see fit, be withdrawn, and from thenceforth the copper, boiler, vessel, or frame, or other utensil in respect of which the same was granted, shall be deemed to be unentered, and shall be liable to seizure and forfeiture accordingly."

Soap makers not to work on Sunday.

Sect. 49. "That every officer of Excise under whose survey any maker of soap shall be shall and he is hereby required to cause every copper or boiler in the soap-house of such maker, and every half-boil tub and other vessel to which fastenings are by this act directed to be affixed, which shall contain any goods, to be locked, secured, and fastened at or before the hour of eleven of the clock on every Saturday night, and shall not open the same from thence until the hour of four of the clock on the Monday morning following (save and except as to any copper or boiler in respect of which the maker of soap shall, at or before the hour of eight of the clock on the Saturday morning, give notice in writing to the proper officer of Excise that he requires such copper or boiler to be left open, for the purpose of the boiling of the same being continued); and if any copper or boiler, half-boil tub, or vessel, hereby required to be locked and secured, shall be opened, un-

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locked, or unfastened, (except when the same is under repair, or on such notice having been given as to any copper or boiler), or if any materials for making soap or any lees or ley shall be put in or taken out of any copper or boiler, or any soap shall be cleansed or cut up, in the soap-house of any maker of soap, between the said hours of eleven of the clock on Saturday night and four of the clock on the Monday morning following, such maker shall, over and above all other penalties to which he may thereby become liable, forfeit one hundred pounds; and every notice given by any maker of soap for doing any act, matter, or thing between the said hours shall be null and void."

Officers of Excise may break up ground to search for private pipes and conveyances.

Sect. 50. "That in every case where any officer of Excise shall suspect any pipe or private conveyance to be made use of by any maker of soap, it shall be lawful for such officer, in the presence of a constable or peace officer, on request made and cause declared, to break up the ground in any soap-house, or near adjoining thereto, or any wall, partition, or other place, to search for such pipe or private conveyance, and on finding the same to break up the ground, house, wall, partition, or place through which such pipe may lead, and to break up or cut such pipe or conveyance, and seize the same; and if no such pipe or conveyance shall be found, such officer shall restore and make good the ground, wall, house, or place so broken up, or make reasonable satisfaction to the owner of such ground, house, wall, or partition; and every person who shall obstruct or hinder any officer of Excise in so searching for, following, or cutting, breaking up, or seizing any such pipe or private conveyance shall forfeit two hundred pounds."

Who to be deemed soap makers.

Sect. 51. "That every person who shall make or manufacture any soap, or who shall melt any soap, adding thereto any tallow, grease, oil, or rosin, or any alkali or alkaline lees or ley, or any water or other matter whatsoever, shall be deemed and taken to be a maker of soap, and shall be subject as such to the enactments, provisions, and regulations, fines, penalties, and forfeitures of this act: provided always, that nothing herein contained shall extend to include or affect any perfumer carrying on the trade or business of selling perfumery, and preparing and converting duty-paid soap into the soaps now known and sold as perfumed or fancy soaps, so as such perfumer shall not make use of any copper or coppers not exceeding three, and not of a larger size than to contain five hundred weight of soap in the whole, except as to any copper or coppers erected and in use before the passing of this act, and which may be allowed by the commissioners of Excise to be continued in use until any alteration thereof shall be made, and shall not in preparing the soap use therewith any greater portion of water than shall be necessary to dissolve the same, and shall not add thereto any grease, oil, or ley or lees, or any other matter, save and except the essential oils, and usual ingredients for perfuming, scenting, and colouring perfumed or fancy soap."

Perfumer to make entry with Excise.

Sect. 52. "That every perfumer who shall prepare, perfume, or scent any perfumed or scented soaps shall make entry in writing of every workhouse, room, or place, and of every copper, boiler, or pan made use of for keeping and for melting, scenting, or perfuming soap, by delivering such entry to the officer of Excise within whose survey his premises shall be situated; and it shall be lawful for any officer of Excise at all times between the hours of six of the clock in the morning and seven of the clock in the evening to enter into any workhouse, room, or place entered or made use of by any such perfumer, and to survey and examine the same, and all soap, materials, and other things therein, and also to take and carry away any sample or samples of soap, paying for the same, when taken, at the rate of sixpence per pound; and every perfumer who shall make use of any workhouse, room, or place, copper, boiler, or pan, for the purpose aforesaid, without having made such entry as aforesaid, shall forfeit one hundred pounds, and all soap found therein."

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Makers of candles and melters of tallow to make entry of their premises, &c. and not to have alkaline lees in their possession.

Sect. 53. "That every maker of candles from tallow or grease, and every melter of tallow, fat, kitchen-stuff, or other grease, not being entered and licensed makers of soap, shall make entry in writing of every house, workhouse, room, and place, and of every copper, boiler, or pan made use of by such maker or melter respectively, for the keeping, melting, or rendering of any tallow, fat, kitchen-stuff, or other grease, by delivering such entry to the officer of Excise within whose survey his premises shall be situated; and it shall be lawful for any officer of Excise to enter into every house, workhouse, room, and place entered and made use of by any such maker of candles or melter, for the melting, rendering, or keeping of tallow, fat, kitchen-stuff, or other grease, and to inspect and survey and examine all tallow, fat, kitchen-stuff, and other grease melting or rendering, or melted or rendered, in the possession of any such maker or melter, and to take any sample thereof, or of any part thereof, not exceeding one pound for each sample, paying for the same when taken at the rate of two-pence per pound; and every maker of candles, or melter of tallow, fat, kitchen-stuff, or other grease, not being an entered and licensed maker of soap, who shall make use of any house, workhouse, room, or place, copper, boiler, or pan, for melting or rendering of any tallow, fat, kitchen-stuff, or other grease, without having made such entry as aforesaid, or who shall have in his possession any alkaline lees or ley, shall forfeit one hundred pounds, and all such lees and ley found in the possession of any such maker or melter, and all tallow, fat, kitchen-stuff, or other grease found in any unentered house, workhouse, room, or place, shall be forfeited."

Lees fit for making soap shall not be manufactured for sale.

Sect. 54. "That no person shall make or manufacture for sale or sell any lees, ley or lye, fit or proper for the making or manufacture of soap, on pain of forfeiting fifty pounds, together with all such lees, ley or lye, and materials for making the same, found in his custody or possession."

Entry to be made with officers of Excise of all soap brought from Ireland into Great Britain, and duty paid thereon.

Sect. 55. "That the proprietor or consignee of any soap removed from Ireland into Great Britain shall, on the arrival of the ship or vessel at the port or place into which the same shall be brought, make due entry with the collector or other officer of Excise appointed to receive the same at such port or place of all the soap belonging or consigned to him on board of such ship or vessel, setting forth the name of the vessel, the number and description of casks, chests, boxes, or packages, in which such soap shall be contained, and the kind of soap, and the weight thereof, with the amount of duty payable thereon; and such collector or other officer shall thereupon examine and weigh, or cause to be examined and weighed, all such soap, and shall charge the full amount of duty thereon, which amount shall be forthwith paid by the proprietor or consignee of such soap; and if within twenty-four hours after the arrival of any ship or vessel in any port or place of Great Britain, unless a Sunday, or a day kept as an Excise holiday, shall intervene, due entry of any soap on board thereof brought from Ireland shall not be made; or if any such soap shall be removed from the quay, wharf, or place where landed before the full duties thereon shall be fully paid, all such soap shall be forfeited, and may be seized by any officer of Excise or Customs; and every person who shall remove or cause to be removed, or shall aid or assist or be concerned in removing, any such soap, before the full duties thereon shall be duly paid, shall forfeit two hundred pounds."

Soap not to be brought from Ireland in packages of less size than 224lbs.

Sect. 56. "That no soap shall be removed or brought from Ireland into Great Britain otherwise than in a cask, chest, box, or other package containing not less than two hundred and twenty-four pounds weight avoirdupois of hard soap, or in barrels, half barrels, firkins, or half firkins of soft soap, and on which shall be plainly and legibly cut, marked, or branded, in large letters, the word "Soap;" and all soap which shall be found on board any ship or vessel, not being soap for the use of the crew of such ship or vessel in the proportion not exceeding one pound

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for each seaman, or shall be found on shore removing or removed from Ireland into Great Britain in any less quantity or otherwise than as aforesaid, or not so marked as aforesaid, shall be forfeited, and may be seized by any officer of Excise or Customs; and every person who shall remove or cause to be removed, or aid or assist or be concerned in removing, any such soap, shall forfeit two hundred pounds."

Persons intending to ship soap on drawback to give a packing notice.

Sect. 57. "That every person intending to remove to Ireland or to export any soap as merchandize, or to ship any soap as stores, and obtain the drawback thereon, shall give twelve hours' notice of his intention to pack the same for such removal, exportation, or shipment to the officer of Excise who shall be appointed by the commissioners of Excise for that purpose, specifying in such notice the time when (such time to be only between the hours of six of the clock in the morning and five of the clock in the afternoon) and place where such soap is intended to be packed, and the kind or description of soap, whether hard or soft soap; and such notice having been given, an officer of Excise shall attend at the time and place specified, and all the hard soap intended to be so removed or exported, or shipped, shall be produced to him, and shall be weighed and packed in his presence, and all soft soap intended to be so removed or exported, or shipped, shall be produced to the officer in the original barrels, half barrels, firkins, or half firkins, with the tare marked thereon, in which the same was taken account of and charged with duty, and shall be weighed and examined by such officer, who may, if he shall think fit, cause any one or more of such barrels, half barrels, firkins, or half firkins, to be emptied out for the better examination thereof; and all packages containing any kind of soap, hard or soft, shall be secured with such fastenings, and sealed with such seals or marks by such officer in such manner as the commissioners of Excise shall direct; and every such officer shall take an account of the kind and quantities of all such soap as shall be produced to him and weighed and packed in his presence, and shall make a return thereof to the export officer of Excise, or officer acting as export officer at the port of shipment; and in weighing any soap for such removal, exportation, or shipment, the same shall be weighed to the nearest quarter of a pound on each draught, any fractions below a quarter of a pound being disregarded: provided always, that if the person giving such packing notice shall not begin and proceed to pack up all such soap at the time mentioned therein, or within half an hour after the attendance of the officer in pursuance thereof, such notice shall be null and void, and a like notice shall be subsequently delivered before the same or any part thereof shall be packed."

Proceedings thereupon.

Penalty for placing any heavy substance with soap packed for exportation, or any other soap than that produced to officer, or for using any art to deceive officer, 200*l.*

Sect. 58. "That if any person shall fraudulently put or place any heavy substance or matter other than soap in any package containing any kind of soap packing or packed, or taken account of for removal to Ireland, or exportation or shipment as stores, or shall pack in any package any other soap, or any substance or article other than the soap produced to the officer as that to be removed, exported, or shipped, or shall by any art, device, or contrivance prevent, hinder, or deceive any officer of Excise from or in taking a true account of the kind and weight of the soap produced, such person shall forfeit two hundred pounds, and every such package, with the contents thereof, shall be forfeited."

Penalty for opening package after being packed, or damaging fastenings, &c.

Sect. 59. "That every person who, not being an officer of Excise or Customs, shall open any package containing any soap which shall have been packed for removal to Ireland, or exportation, or to be shipped as stores, or shall wilfully destroy or deface any seal of the officer placed thereon, or damage any of the fastenings thereof, and every person who shall wilfully cut out, erase, obliterate, alter, or damage any figure, letter, or mark cut, written, painted, branded, or made on any such package, or the number thereof, shall forfeit two hundred pounds, and every such package, with the contents thereof, shall be forfeited, and

may be seized by any officer of Excise or Customs: provided always that it may be lawful to open the packages of soap shipped as stores after the ship or vessel shall have sailed on her voyage."

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Any maker of soap for whom soap has been packed for exportation may give notice for altering directions or marks on a change of destination, or may have soap unpacked for home consumption.

Sect. 60 provides and enacts, "That if any maker of soap by whom any soap shall have been packed for removal to Ireland or for exportation shall, before giving notice for the shipping thereof, require to change the destination thereof, and in consequence to alter the direction or any of the marks thereof, or not having exported such soap shall require to use the same for home consumption, it shall be lawful for such maker to give notice thereof to the officer of Excise who shall have packed such soap, or to any other officer of Excise authorized to pack soap on his premises, of such change of destination or desire to have the cask, chest, box, or package containing such soap opened for home consumption; and the officer of Excise to whom such notice shall be given shall attend at the premises of such maker, and shall there see the directions and marks on the cask, box, chest, or package altered as required, and shall also weigh such cask, box, chest, or package, or in case of taking out for home consumption shall wholly remove the seals and fastenings from such cask, box, chest, or package, and open the same; and in every such case such officer shall transmit to the export officer of Excise of the port a certificate of such alteration of the direction or marks, and also the weight of the soap as last ascertained, on which weight only, if less than that found on packing the soap, the drawback shall be allowed, or of such cask, box, chest, or package having been opened for home consumption."

Shipping notice to be given.

Sect. 61. "That every person intending to remove to Ireland, or to export as merchandize or ship as stores, any soap on drawback, shall by himself or his agent give to the export officer of Excise, or officer acting as such at the port of shipment, a notice in writing of his intention to ship such soap six hours at least before such shipment shall be made, in which notice shall be specified the number of packages to be shipped, with the respective marks or numbers thereon, and the quantity and description of soap in each package, together with the rate and amount of the duty paid and of the drawback claimed, and the value for home consumption of the whole of the soap to be shipped, distinguishing the quantities and kinds of soap, whether if hard soap or soft soap; and such notice shall also specify the quay or place where the packages are then lying, and from which the same are to be shipped, and the time of shipment, with the name of the ship and master thereof, and the place or port to which such soap is to be removed or exported, or that the same is to be shipped as stores; and the person so intending to remove, export, or ship such soap shall also, by himself or his agent, make a declaration before the export officer of Excise, or officer acting as such as aforesaid, under the provisions of an act passed in fifth and sixth years of his late Majesty's reign, intituled "An Act to repeal an act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits;' and to make other Provisions for the Abolition of unnecessary Oaths," that such packages, and the soap contained therein, are and is the same described and set forth in the account or certificate of the packing officer, and that to the best of his knowledge and belief the full duties of Excise have been charged on such soap, and shall also give bond, with one or more sufficient surety or sureties, to be approved of by the officer appointed by the commissioners of Excise to take such bond, in treble the value of the drawback, conditioned that such packages, with the soap therein, shall with all convenient speed be shipped and removed or exported, or shall be used only as stores for the use of the vessel (as the case may be), and shall not be unpacked in any port or harbour of Great Britain, nor unloaded,

5 & 6 Will. 4, c. 62.

(14). *Soap.*

3 & 4 Vict. c. 49.

unshipped, or relanded (*a*), or put on board any other ship or vessel in any part of Great Britain (shipwreck or other unavoidable accident excepted); and such notice having been given and such declaration made as aforesaid, and such security having been entered into, the officer of Excise receiving the same shall write his name upon the said shipping notice, as a certificate of the requisites aforesaid having been complied with, and shall forward and transmit the said notice, with his name thereon, to the proper officer of Customs at the port whose duty it may be to attend the shipping of such goods."

The soap to be produced and

sence of officer of Customs.

Sect. 62. "That all the said packages, with the soap therein, shall, at the time specified in the notice for shipping the same, be produced to the proper officer of Customs, who shall inspect and examine the same, and being satisfied that they are the packages specified in the shipping notice, shall see them shipped in his presence, and certify such shipment on the shipping notice, and return the same to the export officer of Excise, or officer acting as such; and such export officer having received back the said notice, with the certificate thereon, shall deliver to the exporter or his agent a debenture, in such form and with such particulars as the commissioners of Excise shall direct, for the payment of the amount of drawback at the expiration of one month from the time of the sailing of the ship or vessel on her voyage, or at such other time as the commissioners of Excise shall direct."

Landing certificate to be produced of soap sent to Ireland, Guernsey, or Jersey.

Sect. 63. "That no debenture shall be made out for drawback on any soap removed to Ireland, or exported to the islands of Guernsey or Jersey, until a certificate shall be produced under the hand of the collector or comptroller of the Customs of the port in Ireland, or the chief officer of the Customs of Guernsey or Jersey, certifying that such soap has been duly landed there."

Packages of soap for which notice for drawback has been given may be examined by officers of Excise and Customs, and if found fraudulently varying from notice to be forfeited with penalty.

Sect. 64. "That in every case where any notice for shipping soap on drawback shall be given it shall be lawful for the officer of Customs to whom the packages containing such soap shall be produced for shipment, and for any other officer of Customs or of Excise, to open all or any of the packages mentioned in such notice, and unpack and examine the contents; and if the same are found correct, such officer shall, at his own expense, to be allowed him by the commissioners of Customs or Excise (as the case may be), cause the same to be carefully repacked, and the respective packages again secured and sealed; but if on such examination any packages, or the contents thereof, shall be found to vary in any particular from the description contained in the shipping notice, so that a higher or greater sum than of right payable shall have been claimed, or would, in case such discovery had not been made, have, on the removal, exportation, or shipment of such soap, been deemed payable as drawback, or her Majesty in any respect defrauded therein, such packages and the contents thereof shall be forfeited, and may be seized by any officer of Customs or Excise; and the person removing, exporting, or shipping the same shall forfeit treble the value of the drawback sought to be obtained, or two hundred pounds, at the election of the commissioners of Excise."

Soap shipped as stores.

Sect. 65 provides and enacts, "That all soap to be shipped as stores on drawback shall be subject to all the regulations, provisions, and enactments, fines, penalties, and forfeitures, contained in any act or acts relating to the Customs in respect of goods and commodities shipped as stores, or duty-free."

No drawback on soap unless worth duty;

Sect. 66 enacts, "That no drawback shall be allowed or payable for or in respect of any hard soap, unless the same shall be packed in bars, or parts of bars, or in cakes perfumed or scented, nor on any soap, unless the same shall be worth at the least the duties of Excise for home consumption."

(*a*) See the 3 & 4 Will. IV. c. 52, s. 33, as to re-importation, *ante*, p. 505.

3 & 4 Vict. c. 49.

Sect. 67. "That no drawback shall be allowed or payable on any hard soap which shall be of a greater specific gravity than 1·22."

nor if exceeding specific gravity of 1·22.

Sect. 68. "That every person who shall produce to any officer of Excise or Customs to be packed or taken account of, or shipped for removal to Ireland, or exportation, or to be shipped as stores on drawback, or who shall pack or ship on drawback any soap not entitled to drawback, or any other soap, or other articles, matters, or goods, other than the soap specified and described in the notice for packing the same, or produced to the officer to be packed, or who shall fraudulently remove, deposit, or conceal any soap with intent unduly to obtain any drawback or any greater drawback than he would otherwise be entitled to, shall, over and above all other penalties which he may thereby incur, forfeit treble the amount of the drawback sought to be obtained, or two hundred pounds, at the election of the commissioners of Excise, and all such soap, or other articles, matters, or goods, shall be forfeited, and may be seized by any officer of Excise or Customs."

Penalty on fraudulently packing or shipping or concealing or depositing soap to obtain drawback.

Sect. 69 repeals the following acts, viz. the 10 Anne, c. 19; the 12 Anne, sess. 2, c. 9; the 1 Geo. I. stat. 2, c. 36; the 11 Geo. I. c. 30; the 5 Geo. III. c. 43; the 12 Geo. III. c. 46; the 14 Geo. III. c. 73; the 17 Geo. III. c. 52; the 24 Geo. III. sess. 2, c. 48; the 26 Geo. III. c. 77; the 27 Geo. III. c. 31; the 28 Geo. III. c. 37; the 32 Geo. III. c. 21; the 47 Geo. III. sess. 2, c. 30; the 59 Geo. III. c. 90; the 3 & 4 Will. IV. c. 16 (except s. 9); and the 2 & 3 Vict. c. 63.

Sect. 70 provides and enacts "That all duties on soap charged and arrears of duties incurred before the commencement of this act, under the said recited acts hereby repealed, or any of them, and any drawbacks or allowances due or owing or payable, and all penalties, fines, and forfeitures incurred under the said recited acts, or any of them, before the commencement of this act, may be recovered, demanded, and paid, sued for, enforced, and recovered and condemned as if the said acts were not repealed.

Recovery of arrears of duties and penalties.

Sect. 71 provides and enacts "That nothing in this act contained shall repeal or affect, or be deemed or construed to repeal or affect, the allowances of the duties of Excise by the said act passed in the third year of the reign of his said late Majesty King William the Fourth, to repeal the duties, allowances, and drawbacks of Excise on soap, and to grant other duties, allowances, and drawbacks in lieu thereof, granted and allowed until the end of the session of Parliament next after the thirty-first day of May one thousand eight hundred and thirty-five, on all soap used, employed, and consumed in Great Britain in the making of any cloths, serges, kerseys, baize, stockings, or other manufacture of sheep or lambs' wool only, or manufactures whereof the greatest part of the value of the materials shall be wool, or in the finishing of the said manufactures, or preparing the wool for the same, or in whitening of new linen in the piece for sale, or in preparing and finishing any manufactures from flax or cotton for sale, or in the process of throwing, printing, or dyeing of silks, and further continued by an act passed in the fifth and sixth years of his said late Majesty's reign, and further continued, except the allowance for whitening of new linen in the piece for sale, by an act passed in the second and third years of the reign of her present Majesty, until the end of the session of Parliament next after the thirty-first day of May one thousand eight hundred and forty-one, or the regulations and provisions for claiming and paying the said allowances, but the same shall continue in the same manner as if this act had not been passed."

This act not to affect allowances of duty on soap used in manufactures (*a*).

Sect. 72 enacts, "That the additional duty or charge of five pounds per centum upon the produce and amount of the several duties and revenues of Excise imposed, and the additional drawbacks and allowances granted by an act passed in this present session of Parliament, intituled '*An Act for granting to her Majesty Duties of Customs, Excise, and As-*

The additional duty of 5*l.* per cent. charged under 3 & 4 Vict. c. 17, to attach on the

(*a*) See the following statute of the 3 Will. IV. c. 16.

(14). *Soap.*

3 & 4 Vict. c. 40.

duties on soap under this act.

Commencement of act.

3 Will. 4, c. 16.

Allowances.

sessed Taxes, shall extend to and attach upon the produce and amount of the duties, drawbacks, and allowances on soap to be raised, levied, collected, and paid by and under the provisions of this act."

Sect. 73. "That this act shall commence and take effect on the twenty-seventh day of July one thousand eight hundred and forty."

By the 3 Will. IV. c. 16, intituled "*An Act to repeal the Duties, Allowances, and Drawbacks of Excise, on Soap, and to grant other Duties, Allowances, and Drawbacks in lieu thereof,*" (10th June, 1833), after reciting that it is expedient that the duties, allowances, and drawbacks now payable in respect of all soap made in Great Britain, and of soap brought from Ireland into Great Britain, should be repealed, and that other duties should be imposed and other drawbacks granted in lieu thereof, enacts, "That from and after the thirty-first day of May one thousand eight hundred and thirty-three, all and singular the duties and allowances of Excise now payable on soap made in Great Britain, and on soap brought from Ireland into Great Britain, except as such duties are hereinafter continued on soap brought from Ireland, and all drawbacks of Excise on soap exported to foreign parts, or removed from Great Britain into Ireland, shall cease and determine and be no longer paid or payable: provided always, that any of the said duties which may have been charged on or before the said thirty-first day of May one thousand eight hundred and thirty-three, and any arrear thereof, and all allowances on any soap which shall have been used, employed, or consumed on or before the said thirty-first day of May one thousand eight hundred and thirty-three, in Great Britain, in the making of any cloths, serges, kerseys, baize, stockings, or other manufactures of sheep's or lamb's wool only, or manufactures whereof the greatest part of the value of the materials shall be wool, or in the finishing of the said manufactures, or preparing the wool for the same, or in the whitening of new linen in the piece for sale, or in preparing and finishing any manufactures from flax or cotton for sale, or in the process of throwing, printing, or dyeing of silk, and the payment of any drawback which shall be payable in respect of the exportation or removal of any soap on or before the said thirty-first day of May one thousand eight hundred and thirty-three, shall and may be sued for, levied, recovered, and paid as if the said duties, allowances, and drawbacks had not been repealed."

Duties and allowances of Excise on soap made in Great Britain or brought from Ireland to cease except as hereinafter continued.

Duties to be levied and drawbacks to be allowed after the 31st of May.

Sect. 2. "That from and after the said thirty-first of May one thousand eight hundred and thirty-three, in lieu and instead of the duties by this act repealed, there shall be raised, levied, collected, and paid unto his Majesty, his heirs and successors, the several rates and duties of Excise hereinafter mentioned; (that is to say), for every pound weight avoirdupois of all hard soap which shall be made in Great Britain, to be paid by the maker thereof, a duty of one penny halfpenny for every pound weight avoirdupois of all hard soap which shall be brought from Ireland into Great Britain, to be paid by the importer thereof, a duty of one penny halfpenny; for every pound weight of all soft soap which shall be made in Great Britain, or which shall be brought from Ireland into Great Britain, to be paid by the maker or importer thereof respectively, a duty of one penny (*a*); and that from and after the said thirty-first day of May one thousand eight hundred and thirty-three there shall be granted and paid, for every pound weight of all hard soap for which the duty in respect thereof shall have been paid, and which shall have been exported as merchandize from Great Britain to foreign parts, or which shall be shipped as stores of any vessel entitled to ship goods as stores duty-free, or which shall be removed from Great Britain into Ireland, a drawback of one penny halfpenny; for every pound weight of all soft soap which shall be so exported, shipped,

Allowances to be granted on soap used in manufactures.

(*a*) These duties and drawbacks are now altered by the preceding act of the 2 & 3 Vict. c. 49. The latter part of the section as to allowances on soap used in manufactures is, however, still in force.

3 Will. 4, c. 16.

or removed, a drawback of one penny; and that from and after the said thirty-first day of May one thousand eight hundred and thirty-three, and until the end of the session of Parliament next after the thirty-first day of May one thousand eight hundred and thirty-five, there shall be granted and allowed, on all soap used, employed, or consumed in Great Britain in the making of any cloths, serges, kerseys, baize, stockings, or other manufactures of sheep or lambs' wool only, or manufactures whereof the greatest part of the value of the materials shall be wool, or in the finishing of the said manufactures, or preparing the wool for the same, or in the whitening of new linen in the piece for sale, or in preparing and finishing any manufactures from flax or cotton for sale, or in the process of throwing, printing, or dyeing of silks, one half of the respective allowances payable on soap used for such purposes before the first day of June one thousand eight hundred and thirty-three."

Duties to be under management of commissioners of Excise, and to be levied in like manner as former duties.

Sect. 3. "That the said duties by this act imposed shall be under the management of the commissioners of Excise; and that the said duties, allowances, and drawbacks shall be respectively raised, levied, collected, recovered, allowed, and paid in such and the like manner, and in or by any or either of the general or special ways, means, or methods by which the former duties, allowances, and drawbacks of Excise respectively hereby repealed, were or might be raised, levied, collected, recovered, allowed, and paid: and the said persons, goods, merchandize, and commodities so by this act respectively made liable to the payment or chargeable with the said duties imposed, or entitled to the said allowances and drawbacks granted by this act, shall be and the same are hereby made subject and liable to all and every the conditions, regulations, rules, restrictions, and forfeitures to which such persons, goods, merchandize, and commodities were generally or specially subject and liable by any act or acts of Parliament in force on and immediately before the passing of this act, respecting the duties of Excise under the management of the commissioners of Excise: and all and every pain, penalty, fine, and forfeiture, of any nature or kind whatever, for any offence whatever committed against or in breach of any act or acts of Parliament on and immediately before the passing of this act, and for securing the revenue of Excise or other duties under the management of the said commissioners of Excise respectively, or for the regulation or improvement thereof, and the several clauses, powers, and directions therein contained, shall and are hereby directed and declared to extend to, and shall be respectively applied, practised, and put in execution for and in respect of the said several duties, allowances, and drawbacks of Excise hereby charged, imposed, and allowed, in as full and ample manner, to all intents and purposes whatsoever, as if all and every the said acts, clauses, provisions, powers, directions, pains, penalties, fines, and forfeitures were particularly repeated and re-enacted in the body of this act."

All penalties for offences against revenue laws to extend to duties and drawbacks hereby charged and allowed.

Allowances on soap to be paid only to owner or foreman of the manufactory.

Sect. 9. "That from and after the passing of this act no such allowance on soap used in manufactures as aforesaid shall be claimed by or be paid or payable to any servant or workman or person, other than the owner or one of the part-owners, or the foreman of the manufactory or business in which the soap in respect of which such allowance shall be claimed shall have been used or consumed."

5 Vict. sess 2, c. 16.

And by the 5 Vict. sess. 2, c. 16, intituled "*An Act to continue, until the end of the session of Parliament next after the thirty-first day of July one thousand eight hundred and forty-four, certain of the allowances of the duty of Excise on soap used in manufactures,*" (13th May, 1842); after reciting that by an act passed in the third year of the reign of his late Majesty King William the Fourth, intituled "*An Act to repeal the duties, allowances, and drawbacks of Excise on soap, and to grant other duties, allowances, and drawbacks in lieu thereof,*" certain allowances of the duties of Excise paid on soap were granted in respect of soap used in certain manufactures, and processes set forth in the said act, and

3 & 4 Will. 4, c. 16.

(14). *Soap.*

3 & 4 Will. 4, c. 16.

which allowances were to cease at the end of the session of Parliament next after the thirty-first day of May one thousand eight hundred and thirty-five: and that by other acts passed in the fifth and sixth years of his said late Majesty King William the Fourth, and in the second and third and also the fifth years of the reign of her present Majesty Queen Victoria, the said allowances (except the allowance for the whitening of new linen in the piece for sale) were continued until the thirty-first day of July, one thousand eight hundred and forty-two; and that it is expedient that the said allowances (except as aforesaid) should be further continued, enacts, "That the said allowances (except the allowance of the duty on soap used, employed, or consumed in the whitening of new linen in the piece for sale) shall continue and remain payable until the end of the session of Parliament next after the thirty-first day of July one thousand eight hundred and forty-four, in like manner as if the same had been made payable until that time by the said first recited act."

Certain allowances of duty on soap to be continued.

(15). *Spirituous Liquors.*

(15). Spirituous Liquors (*a*).

[6 Geo. IV. c. 80; 9 Geo. IV. c. 44; 11 Geo. IV. & 1 Will. IV. c. 49; 2 & 3 Will. IV. c. 74; 6 & 7 Will. IV. c. 72; 5 Vict. sess. 2, c. 25.]

Licences.

For the amount to be paid for the annual licence by every distiller, maker, rectifier, compounder, &c. of spirits, *see ante*, pp. 644, 645.

The principal act respecting this most important branch of Excise law, is the following: relating to spirits made in England, to distillers, compounders, and rectifiers.

6 Geo. 4, c. 80.

The 6 Geo. IV. c. 80, intituled "*An Act to repeal the duties payable in respect of spirits distilled in England, and of licences for distilling, rectifying, or compounding such spirits, and for the sale of spirits, and to impose other duties in lieu thereof; and to provide other regulations for the collection of the said duties, and for the sale of spirits, and for the warehousing of such spirits, without payment of duty, for exportation,*" (27th June, 1825); after reciting that it is expedient to repeal the duties payable in respect of spirits distilled in England, and of licences for distilling, rectifying, or compounding such spirits, and for the sale of spirits, and to impose other duties in lieu thereof; and to provide other regulations for the collection of the said duties, and for the sale of spirits, and for the warehousing of such spirits, without payment of duty, for exportation; enacts, by

From January 5, 1826, so much of the acts in force for granting duties on British spirits and licences, and regulating the trade of distillers and sellers of spirits, &c. in England, repealed.

Sect. 1, "That from and after the 5th day of January, 1826, so much and such parts of the several acts in force at and immediately before the commencement of this act, as grant any duty on wort or wash brewed or made for extracting spirits in England, or upon spirits extracted in England for home consumption, or extracted in Scotland or Ireland respectively, and imported into England, or duty on any licence for distilling, rectifying, or compounding British spirits, or for the sale of spirits, or as regulate or relate to the distillation of such spirits by persons licensed to make or distil such spirits in England, or the mode of charging the duty thereon, or on wort or wash brewed or made to extract such spirits, or as regulate or relate to the rectification or compounding of such spirits in England by persons duly licensed for that purpose, or the strength at which it is lawful to keep in stock or send out spirits, or as regulate or relate to the intercourse or removal of British spirits made in England, Scotland, or Ireland respectively, or as relate to the distillation of spirits in England for exportation to Scotland, or in Scotland for exportation to England, or to the several other matters and things expressly pro-

(*a*) It will be unnecessary to do more than refer here generally to the acts relating to Scotland and Ireland; they are, the 28 Geo. III. c. 46; 1 & 2 Geo. IV. c. 82; 3 Geo. IV. c. 52; 4 Geo. IV. c. 94; 6 Geo. IV. c. 58; 9 Geo. IV. c. 45; 2 Will. IV. c. 29; 4 & 5 Will. IV c. 75; 6 & 7 Will. IV. c. 72; 5 Vict. Sess. 2, c. 15.

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

vided for by this act, but not otherwise, and so much and such parts only as aforesaid of the said several acts shall be and are hereby repealed accordingly; save and except so far as the said acts or any of them repeal or repeals any former act or acts, or any part or parts of any former act or acts, and except also so far as the said acts or any of them relate or relates to the charging, recovering, prosecuting, suing for, levying, paying, accounting for, allowing, abating, or mitigating of any duty, or any arrear thereof, which shall have been or shall be chargeable or payable on such spirits, or on any wort or wash, under the said acts or any of them, or of any fine, penalty, or forfeiture for any offence against the said acts or any of them, which shall have been or shall be committed at any time on or before the 5th day of January 1826, all which suits or other proceedings, matters, and things shall and may be had and proceeded on, and shall remain, and be to all intents and purposes whatsoever, as if the said acts had not been repealed in manner aforesaid. Provided always, that it shall not be lawful to make or distil any spirits under the aforesaid laws and regulations hereby repealed from or after the 10th day of October 1825, on pain of forfeiting the sum of 500*l.*, or 20*s.* per gallon for every gallon of the spirit so made or distilled, at the election of the commissioners of Excise, or person who shall inform or sue for the same."

No spirits shall be made or distilled under the laws repealed after the 10th October, 1825.

Sect. 2. "That from and after the 5th day of January, 1826, there shall be granted, raised, levied, collected, paid, and satisfied unto and to the use of his Majesty, his heirs and successors, the several duties of Excise following; (that is to say),

New duty granted on spirits (a).

For and upon every one hundred gallons, imperial standard gallon measure, of spirits of the strength of hydrometer proof, as denoted by the hydrometer called Sikes' hydrometer, which shall be made or distilled in England by any person or persons whomsoever, the sum of 35*l.*, and so in proportion for any greater or less degree of strength, and for any greater or less quantity, to be paid by the first maker or distiller of such spirits:

For and upon every one hundred such gallons of spirits, of such strength as aforesaid which shall have been or shall be made and extracted in Scotland or Ireland respectively, and warehoused there without payment of duty, and which shall be taken out of warehouse there for the purpose of being brought or imported into England for consumption, the sum of 35*l.*, and so in proportion for any greater or less degree of strength, or any greater or less quantity, to be paid by the distiller or proprietor thereof at the time of the delivery of such spirits from the warehouse in Scotland or Ireland respectively for the purpose of being brought or imported into England" (a).

Sect. 3. "Provided always, that on all sweetened or compounded spirits imported into England from Scotland or Ireland, or into Scotland or Ireland from England, the duties aforesaid, according to the proportions aforesaid respectively, shall be computed upon the highest degree of strength at which spirits can be made.

Duties on compounded spirits to be computed on highest strength.

Duties:

For every licence to be taken out by any distiller or maker of low wines or spirits in England, the sum of 10*l.*: — On licences to distillers.

For every licence to be taken out by any rectifier or compounder of spirits in England, the sum of 10*l.*: — To rectifiers or compounders.

For every licence to be taken out by any dealer in spirits in England, not being a retailer thereof, the sum of 10*l.*: — To spirit dealers.

For every licence to be taken out by any retailer of spirits in England (c), if the — Spirit retailers (b).

(a) When spirits distilled and made in *Ireland* are imported from thence into *England*, they become *British spirits*, and are entitled, as such, to all the advantages of *British* spirits existing at the time of the act of union; as, for instance, to the provisions of the 26th of Geo. III. c. 73. (*Attorney-General* v. *M'Kenzie*, 11 *Price*, 284.)

(b) It was held that a person who sells spirituous liquors by retail without a licence from *two justices of the peace* is liable to the penalties of the 5 Geo. III. c. 46, though he has a licence from the commissioners of the Excise to retail spirituous liquors. (*Rex* v. *Downs*, 3 *T. R.* 560.)

(c) The additional duty imposed on retailers' licences by the 4 & 5 Will. IV. c. 75, was afterwards repealed by the 6 & 7 Will. IV. c. 72, s. 9: see *post*.

(15). *Spirituous liquors.*

6 Geo 4, c. 80.

dwelling-house in which such retailer shall reside or retail such spirits at the time of taking out such licence shall not, together with the offices, courts, yards, and gardens therewith occupied, be of the value, or rated under the authority of any act or acts for granting duties on inhabited houses, at a rent of 10*l.* per annum, 2*l.*:

If at 10*l.* per annum or upwards, and under 20*l.*, 4*l.* 4*s.*
If at 20*l.* per annum or upwards, and under 25*l.*, 6*l.* 6*s.*
If at 25*l.* per annum or upwards, and under 30*l.*, 7*l.* 7*s.*
If at 30*l.* per annum or upwards, and under 40*l.*, 8*l.* 8*s.*
If at 40*l.* per annum, and under 50*l.*, 9*l.* 9*s.*
And if at 50*l.* per annum or upwards, 10*l.*

The said duties for licences to be paid by the respective distillers, rectifiers, compounders, dealers, and retailers taking out such licences respectively" (*d*).

Duties to be carried to consolidated fund.

Sect. 4. "That all moneys arising from the duties by this act imposed, the necessary charges of raising and accounting for the same excepted, shall from time to time be paid into the receipt of his Majesty's Exchequer, and shall be carried to and made part of the consolidated fund of the United Kingdom of Great Britain and Ireland."

Duties and drawback to be under management of commissioners of Excise, and to be levied under this act, and former general Excise laws.

Sect. 5. "That the several duties and the drawback by this act imposed and granted shall be under the management of the commissioners of Excise, and shall be raised, levied, collected, recovered, secured, and paid by such persons, at such times, and in such manner, and by such ways and means as are hereinafter directed and set forth, and under such management, and under and subject to such rules, regulations, conditions, penalties, and forfeitures, and with such powers of adjudging and mitigating penalties and forfeitures, and with and subject to such powers, and to the like rules and directions, and by such methods, and in such manner and form, and in or by any of the general or special means, ways, or methods by which other duties and drawbacks of Excise may be raised, levied, collected, recovered, and paid, as fully and effectually to all intents and purposes as if the same and every of them were particularly repeated and re-enacted in the body of this act, except only so far as the same are expressly altered or repealed by this act."

No person shall keep any still whatever without a licence under provisions of this act.

Sect. 6. "That from and after the commencement of this act it shall not be lawful for any person or persons in England to have or keep any still whatever, for the purpose of making or distilling or rectifying or compounding spirits, without having first obtained a licence for that purpose, under the provisions of this act, signed by the commissioners of Excise, or any two of them, or by some person or persons directed or employed by them to grant such licence, or by a collector and supervisor of Excise within their respective collection and district, according to the law or laws of Excise for granting licences; and every such licence shall and may be according to such form and shall contain such particulars as the said commissioners of Excise shall and may from time to time direct: and every such licence to be granted under the provisions of this act shall continue in force until and upon the 10th day of October next after the date thereof, and no longer. Provided always, that persons in partnership carrying on any one such trade or business in one house or place only, shall not be obliged to take out more than one such licence in any one year; and that no one licence which shall be granted by virtue of this act shall authorize or empower any person or persons to whom the same shall be granted to have, keep, or make use of any still, or to prepare or make any wort or wash, or to distil any wash, low wines, or spirits, or rectify or compound any spirits, in any other house or premises than the house or premises mentioned in such licence."

(*d*) By the 11 Geo. IV. & 1 Will. IV. c. 49 (see *post*), an additional 6*d.* is imposed upon the amount of the above-mentioned duties. To this increased amount must also be added the additional duty of 4*d.* per gallon, by the 3 Vict. c. 17.

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6 Geo. 4, c. 80.

Licence to be renewed annually.

Sect. 7. "That it shall not be lawful for any person, at any time after the 10th day of October next, after the date of any such licence for keeping a still, which shall be granted to such person under this act, to continue to keep or work or to use any still, or to brew or make any wort or wash, or to distil any low wines, spirits, or feints, or to rectify or compound any spirits, until such person shall have obtained a new licence for that purpose, and shall have performed all such requisites as are required and directed by this act to be done, either previously or subsequently to obtaining the first or original licence, and so in every year, so long as such person shall continue the business of a distiller or rectifier or compounder of spirits; and if any person shall continue to keep or work or shall use any still, or shall make or brew any wort or wash, or shall distil any low wines, spirits, or feints, or rectify or compound any spirits contrary hereto, every such person shall in every such case forfeit the sum of 500*l.*; and all such wort, wash, low wines, feints, and spirits, and every such still, with the head and worm thereof, and all other vessels and utensils therewith used or containing such wort, wash, low wines, feints, or spirits, shall be forfeited, and may be seized by any officer of Excise."

Penalty on distillers distilling, &c. without licence, 500*l.* &c. (*a*).

Penalty on distiller continuing to work whose licence is forfeited.

Sect. 8. "That if any distiller, rectifier, or compounder, whose licence shall be forfeited under the provisions of this act, shall afterwards, until newly licensed, make or brew any wort or wash, or shall distil any low wines, spirits, or feints, or shall rectify or compound any spirits, every such distiller, rectifier, or compounder shall forfeit the sum of 500*l.*; and all such wort, wash, low wines, spirits, and feints, and all vessels and utensils containing the same, shall be forfeited, and may be seized by any officer of Excise."

No person to be licensed, or to make entry of any house or still for making wash, low wines, or spirits, unless he shall occupy a tenement of 20*l.* per annum, and shall pay parish rates; or unless such distillery be in or within one quarter of a mile of a market town of 500 inhabited houses, except distillers established and licensed on the 5th April, 1825.

Sect. 9. "That no licence shall be granted to or be held by any person or persons to have, keep, or make use of any still for making or distilling spirits, nor shall any person or persons be permitted to make entry of any house or place or of any still or utensil for making or distilling wash, low wines, or spirits, unless such person or persons shall be an inhabiting householder, occupying a tenement or tenements of the yearly value of 20*l.* or upwards, and for which he, she, or they shall be accordingly assessed in their own name, and shall also pay to the parish rates in the several parishes or places in which they shall respectively reside, or unless such house or place (except any distillery established and licensed on the 5th day of April, 1825) shall be situated within, or within one quarter of a mile of a market-town containing at least 500 inhabited houses; and that no entry of any house, place, still, or utensil for making or distilling of wash, low wines, or spirits, shall be of any avail to any person not so qualified, or for any longer time than the person or persons so making entry shall be so qualified, or where such house or place, except as aforesaid, shall not be so situated as aforesaid, and every person making or distilling wash, low wines, or spirits, and not qualified as aforesaid, or in any house or place except as aforesaid, not so situated as aforesaid, shall, notwithstanding any entry by him, her, or them made, be deemed and taken to be persons making and distilling wash, low wines, and spirits without entry, and shall be subject to the like penalties and forfeitures as persons making and distilling wash, low wines, and spirits without entry are by this act in such case made subject and liable."

No person to keep a still of less than 400 gallons, or to use in any distillery

Sect. 10. "That no licence to be granted under the provisions of this act shall authorize any person to have, keep, or make use of any still or other utensil for the making or distilling of low wines or spirits, the body

(*a*) The setting up of a private still without entry at the Excise, or licence, was held to be an offence under 36 Geo. III. c. 73, s. 53, subjecting the party to the penalty of 20*l.* only, and not 200*l.*; and therefore a conviction for such an offence in the latter penalty, was quashed. (*Rex* v. *Bond*, 1 *B. & Ald.* 390.)

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more than two wash stills and two low wine stills, if he keeps any still of less content than 3000 gallons, penalty, 100*l.*

of which without the head thereof shall be of less capacity or content than 400 gallons; and that it shall not be lawful for any distiller keeping or using any still of smaller content without the head than 3000 gallons to keep or use in any distillery at the same time more than two wash stills and two low wine stills, upon pain of forfeiting for every still kept or used by any such distiller at the same time, to distil wash or low wines respectively, above the number aforesaid, the sum of 100*l.* for every such further still, and for every time that the same shall be so used; and every such further still shall be forfeited, and shall and may be seized by any officer or officers of Excise."

All persons having wash fit for distilling, and a still, shall be deemed common distillers.

Sect. 11. "That every person making or keeping any wash prepared or fit for distilling or making low wines or spirits, or any low wines or feints, and having in his, her, or their custody or use any still or stills, shall be deemed and taken to be and is hereby declared to be a distiller, liable to the several duties of Excise, and to the several penalties, fines, and forfeitures imposed by this act relating to distillers."

Distillers not to brew or employ a still on Sunday, on penalty of 50*l.*

Sect. 12. "That if any wort shall be brewed or made by any distiller, or if any still shall be made use of by any distiller, rectifier, or compounder, at any time between the hour of eleven of the clock in the afternoon of any Saturday and the hour of one of the clock in the forenoon of the next succeeding Monday, every such distiller, rectifier, or compounder in each and every such case shall forfeit the sum of 50*l.*"

After licence granted, and before distiller makes entry of his distillery utensils, he shall erect certain chargers and receivers.

Sect. 13. "That every person who shall be licensed under this act to keep any still for distilling spirits, shall, after being so licensed, and before making such entry as is by this act required of any still or other vessel or utensil to be used by such person, erect and keep the several vessels hereinafter enumerated, and in the manner and for the purposes hereinafter described; that is to say, one vessel to be called a wash charger, one other vessel to be called a low wines receiver, one other vessel to be called a low wines and feints charger, one other vessel to be called a feints receiver, one other vessel to be called a spirit receiver, and, except as hereinafter mentioned, one other vessel to be called a spent lees receiver."

Number of chargers and receivers, &c.

Penalty for a greater number, 200*l.* &c.

Sect. 14. "Provided always, that there shall not be erected or kept in any distillery more than one such wash charger and one such spirit receiver, nor more than two such low wines receivers, nor more than two such feints receivers, nor more than two such low wines and feints chargers; and if any greater number of such vessels and utensils as aforesaid shall be found in any distillery, the distiller in whose distillery the same shall be found shall forfeit 200*l.*, and all such vessels exceeding the number aforesaid, together with the contents thereof, shall be forfeited, and may be seized by any officer of Excise."

Description of wash charger.

Sect. 15. "That every such wash charger shall be a close covered vessel, and the content thereof shall not be less than that of the largest wash still; and every such wash charger shall be connected with the wash still or stills by one close metal pipe to each such still, having a cock or cocks thereon, one end of which pipe shall be fixed into the bottom of such wash charger, and the other end thereof shall be fixed into each such still; and to such wash charger there shall be one other close metal pipe, having a cock thereon, one end of which pipe shall be fixed into the pump or pumps placed in the jack back, if any such vessel shall be used, or otherwise to the pipe or trough communicating with the fermenting wash backs, and the other end of such pipe shall be fixed into such wash charger, and such charger shall not have any communication with any other vessel or utensil whatever; and every such low wines receiver shall be a close covered vessel, with a pump fixed therein, for the conveyance of low wines from such receiver into the low wines and feints charger or chargers, and there shall be one close metal pipe, externally visible for its whole length, attached to and leading directly from the safe at the end of the worm of the wash still, and fixed into every such low wines receiver or receivers, so that

Description of low wines receiver.

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6 Geo. 4, c. 60.

all low wines running into such pipe from such safe shall immediately be discharged therefrom into such receiver or receivers, which receiver or receivers shall not have any communication with any vessel or utensil whatsoever, except as aforesaid; and every such feints receiver shall be a close covered vessel, with a pump fixed therein, for the conveyance of feints from such receiver into the low wines and feints charger or chargers, and there shall be one close metal pipe, externally visible for the whole length, attached to and leading directly from the safe at the end of the worm of the low wines still, and fixed into every such feints receiver or receivers, so that all feints running into such pipe from such safe shall immediately be discharged therefrom into such receiver or receivers, which receiver or receivers shall not have any communication with any vessel or utensil whatsoever, except as aforesaid; and every such low wines and feints charger shall be a close covered vessel, connected with the low wines still or stills by a close metal pipe to each such still, having a cock or cocks thereon, one end of which pipe shall be fixed into the bottom of such charger, and the other end shall be fixed into each such still, and each such charger shall have communication with the low wines and feints receivers respectively by means of close metal pipes, one end whereof respectively shall be fixed to each such charger, and the other end whereof shall be attached to the pump or pumps, to be so fixed as aforesaid in the low wines receiver or receivers, and feints receiver or receivers respectively, and such charger shall not have any communication with any other vessel or utensil whatever, except as aforesaid; and every such spirit receiver shall be a close covered vessel, and shall not have any communication with any vessel or utensil whatever, except with the safe of the low wines still, by means of one close metal pipe, externally visible for its whole length, attached to and leading directly from such safe at the end of such worm, and fixed into such spirit receiver in such manner as that all spirits running therein from such safe shall run directly and be discharged therefrom into such spirit receiver without resting in the said pipe, and in every such spirit receiver there shall either be a pump placed and fixed for emptying the same, or a proper discharging cock for drawing off the spirits therefrom; and that each and every such charger and receiver shall be erected and kept in a convenient and public situation in the still-house, or to the approbation of the commissioners of Excise, and exposed to open view, and easy of access and inspection to the surveying officer on all parts thereof, and each such charger and receiver respectively shall have a sufficient cover thereon, with a rectanguluar dipping hole cut in such cover, not more nor less than an inch square, and in which dipping hole there shall be placed such dipping rod as shall be provided by the proper officer, who shall secure such rod in such manner as to him shall seem expedient, to prevent the removal thereof out of any such charger or receiver; and every such spent lees receiver shall be a close covered vessel, and shall not have any communication with any vessel or utensil whatsoever, except with the low wines still, by means of one close metal pipe, externally visible for its whole length, attached to and leading directly from such still, and fixed into such spent lees receiver, and which pipe shall be the only discharge pipe of such still, having a cock thereon secured as the supervisor or surveyor surveying such distillery shall direct and approve, and in the bottom of which receiver shall be an internal safe and secure plug in a discharge hole, and every such receiver shall have one other opening, not more than one-third of the depth of such receiver from the top of such receiver, covered and secured by an internal metal plate, perforated with circular holes of not more than four-tenths of an inch in diameter, and such receivers shall have no other opening whatsoever; and if any charger or receiver, or pipe therefrom, or cock therein, shall be made use of in the distillery of any distiller which shall not be erected, kept, and constructed in manner herein directed, or which shall have any

Description of feints receiver.

Description of low wines and feints charger.

Description of spirit receiver.

Dipping rods to be fixed in chargers, receivers, &c.

Description of spent lees receiver.

Penalty for constructing chargers or receivers contrary hereto, 200*l.*; and 20*l.* for every

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6 Geo. 4, c. 80.

day during which they remain.

hole therein except the trap-door in the cover thereof, properly secured by the officer for examining or cleansing such receiver respectively, or any communication with any other vessel or utensil whatsoever, other than as by this act is required, authorized, and allowed, then and in every such case such distiller shall forfeit the sum of 200*l.*, and also the sum of 20*l.* for every day during which such charger or receiver, or pipe or cock, shall remain in the distillery of such distiller."

There shall not be any pipe or opening in any still, except as herein described, on penalty of 200*l.*

Sect. 16. "That if in any distillery, or any house for distilling, rectifying, or compounding spirits, or any place adjoining thereto, there shall be any pipe or conveyance whatsoever leading directly or indirectly to or from any still, or from the head thereof, or any opening whatever, into or out of any still, other than such pipes, conveyances, and openings as are prescribed by this act, or if there shall be any opening whatever into or out of the worm of any still, except the communication which such worm shall have with the still or head thereof, and the opening into the safe at the end of such worm, save and except such air-valve or conductor as shall be approved of by the commissioners of Excise, or such person as they shall employ, then and in every such case the distiller, rectifier, or compounder so offending shall forfeit the sum of 200*l.*"

Distillers shall make holes or openings in the breast of their stills, not less than two inches in diameter, through which officers may take samples.

Sect. 17. "That in the breast of every still used by any distiller there shall be a hole or opening made, whereby the officers of Excise may be enabled to take gauges and samples, at the time and in the manner required by this act; and such hole or opening shall not be less than two inches in diameter, and shall be contrived so that the officers may take a sample or samples from the still with a phial, to be drawn perpendicularly through the same, and also, so that any such still may be thereby cleansed, subject to such directions as the said commissioners of Excise may think fit to give in that behalf; and proper locks and fastenings shall be provided by the supervisor of Excise for the district, at the expense and charge of every such distiller, for properly and sufficiently locking and securing the said hole or opening, and for securing the head of each and every still and the furnace door of each and every still respectively used by such distiller; and all such locks and fastenings shall be locked and sealed by the proper officer of Excise; and if any still shall be set up or used by any distiller, in the breast whereof such hole or opening of the size aforesaid shall not be made, or if any distiller shall not observe any directions which may be given by the commissioners of Excise as aforesaid in that behalf, or if such locks and fastenings shall not be paid for and maintained as aforesaid, or if the officer shall be prevented or hindered by any distiller, or his, her, or their servants or workmen, from affixing any lock or fastening as aforesaid, or if any of the locks, seals, and fastenings as aforesaid shall be wilfully and injuriously opened, broken, or damaged, or if by any means, device, or contrivance whatsoever, any furnace door, or any fastening on the head of any still, or on the hole or opening in the breast of any still, shall be wilfully and injuriously opened by any distiller, or by any person in the employ or under the command of such distiller, at any time after the same shall have been locked and secured by the officer of Excise, every such distiller shall for every such offence or neglect respectively forfeit and lose the sum of 200*l.*"

Penalty on distiller not making such holes or openings, or not paying for and maintaining fastenings for securing the same, or for securing the still heads and furnace doors, or for opening or damaging any lock or fastening, &c. 200*l.*

The end of the worm of each still shall be enclosed and secured, and the spirits run into a close safe, &c.

Sect. 18. "That the end of every worm belonging to every still in the distillery of every distiller shall be enclosed and secured in such manner and by such mechanism and means as the commissioners of Excise shall direct, and shall for that purpose provide; and that all low wines, feints, and spirits, from time to time running from the end of such worm, shall run from thence into a safe, enclosed and secured as aforesaid, and shall be conveyed directly and by such a pipe and pipes as aforesaid, open externally to the inspection and examination of the officers for its or their whole length from such safe into the receivers respectively, as the case

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6 Geo. 4, c. 80.

Penalty, 200*l.*

may be, of such distiller; and if, upon demand by the proper supervisor or surveyor, the end of every such worm in the distillery of such distiller shall not be enclosed and secured, and at the expense of every such distiller maintained and kept enclosed and secured by such mechanism and means as shall be so directed and provided as aforesaid, or if the whole of the low wines, feints, and spirits, coming from such worm, shall not be run into such safe so enclosed and secured as aforesaid, or if such low wines, feints, and spirits respectively, and every part thereof, shall not be successively conveyed from such safe, into the low wines receiver, feints receiver, and spirits receiver respectively, directly and by such a pipe or pipes as aforesaid, or if such mechanism and means of enclosing the end of such worm and safe as aforesaid shall not be affixed and kept and preserved affixed as aforesaid, or if at any time after the end of any such worm and any such safe are enclosed and secured as aforesaid the mechanism or means by which the same shall be enclosed and secured as aforesaid, or any part thereof, shall be destroyed or injured, or if by any art or contrivance any access shall be gained or had, except by the sample cock of such safe, without notice to, and with the knowledge of, and in the presence of, the officer, to the enclosed end of such worm, or to any low wines, feints, or spirits, from the time of the extraction or distillation thereof in any such still, until the same have been taken account of by the officers in the proper receiver or receivers, or the officers shall be in any manner prevented from or hindered, baffled or defeated, in ascertaining by such apparatus the strength and quality of any low wines, fines,* or spirits, whilst running, or in taking a true account in such receiver or receivers of all the low wines, feints, and spirits distilled or made by such distiller, then and in every such case every such distiller or other person or persons shall for every such offence forfeit the sum of two hundred pounds: Provided always, that if enclosing and securing the end of such worm or safe as aforesaid shall upon experiment be found to injure the quality of the spirits run therefrom, it shall be lawful for the commissioners of his Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three of them, upon proof thereof made to their satisfaction, to order and direct, that no distiller as aforesaid shall be required to enclose any such worm end or safe as aforesaid."

*Sic.

If enclosing the worm be found prejudicial, Treasury may order disuse of close safe.

Sect. 19. "That there shall be a discharge cock fixed to every still kept for the making or distilling of low wines or spirits, to be kept safely and securely locked by the proper officer of Excise, except when opened by such officer, on reasonable notice by the distiller, not oftener than once in six hours, and such discharge cock shall not be more than three feet distant from the body of such still, or eighteen inches from the brickwork, and shall be firmly attached to such still by a straight metal pipe; and such discharge cock and pipe shall be so fixed and placed, as that the officers of Excise may at all times have free and convenient access to the same; and if any distiller shall have or keep any still to which there shall not be a discharge cock attached, and safely and securely locked, in the manner herein directed, or if there shall not be such pipe as herein prescribed and directed, or if any distiller shall open, injure, or alter such cock, except on notice to and in the presence of the officer, and with his consent, then and in each and every such case such distiller shall forfeit the sum of 50*l.* Provided always, that no such discharge cock shall be locked by the officer where a spent lees receiver is provided and fixed, according to the provisions of this act."

Distiller shall keep a discharge cock to each still.

Penalty, 50*l.*

Sect. 20. "That every distiller shall provide and fix, to the satisfaction of the supervisor, a proper discharge cock or plug and plug-hole in every fermenting wash back, through which cock or plug-hole the wash in such wash back shall from time to time be conveyed by a main pipe or open trough, into the jack back, if any, or into the wash charger; and such main pipe or trough shall be placed and fixed in such manner, that all wash or liquor put therein shall forthwith run and be discharged

Distiller shall keep a proper discharge cock or plug in each fermenting wash back.

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6 Geo. 4, c. 80.

from thence into such jack back or wash charger, as the case may be, and not elsewhere, except by a sewer cock fixed on such main pipe, and properly secured and fastened; and there shall not be any other pipe or conveyance entering into or passing out of any such wash fermenting back, except the pipe for conveying wort into such fermenting back from the coolers; and if such discharge cock or plug shall not be provided and fixed as aforesaid, or if such pipe or trough shall not be placed and fixed as aforesaid, or if such sewer cock thereon shall not be fixed and secured as aforesaid, or if there shall be any other pipe or conveyance to or from any fermenting back, except as aforesaid, then and in every such case such distiller shall forfeit the sum of 200*l.* Provided always, that nothing herein contained shall prevent any distiller from placing any close metal pipe or pipes in, but not opening into, any wash back, for the purpose of conveying through such back hot or cold air, or water, for the purpose of promoting or retarding the fermentation of the worts or wash contained in such back."

Penalty, 200*l.*

Construction of cocks required to be used.

Sect. 21. "That every cock required by this act to be kept or used shall be made and constructed in such manner as shall be from time to time prescribed and directed or approved by the commissioners of Excise; and if any cock required by this act to be kept or used shall be made, constructed, or used otherwise or differently than as shall at that time be directed, prescribed, or approved by the commissioners of Excise, the distiller, rectifier, or compounder by whom such cock shall be kept or used shall forfeit the sum of 50*l.*

Penalty, 50*l.*

Distiller shall provide all such proper cocks, pumps, and fastenings, &c. at his own expense.

Sect. 22. "That every distiller, and rectifier, or compounder shall, at his own expense and charge, provide, maintain, and keep the several utensils, cocks, pumps, pipes, and troughs which are required by this act, and shall also provide, maintain, and keep, at the expense and charge of such distiller, rectifier, or compounder, proper and sufficient fastenings for securing the several cocks and plugs required by this act to be secured, and for securing the covers of or belonging to the chargers and receivers hereinbefore mentioned respectively, and also for securing the pumps, vessels, and utensils permitted, allowed, or required for the purposes mentioned in this act; and it shall and may be lawful for any officer of Excise surveying the distillery of any distiller to lock, secure, and fasten the several cocks, plugs, covers, pumps, pipes, vessels, and utensils, for which fastenings are required to be provided, in such manner as the commissioners of Excise may direct as aforesaid, and to keep the same and each and every of them so locked, secured, and fastened at all times, except when such officer shall be required, under the provisions of this act, to attend and shall attend to open and unlock the same."

All such cocks, fastenings, &c. shall be kept and affixed to the satisfaction of the officer.

Sect. 23. "That all such cocks, plugs, pumps, fastenings, pipes, troughs and other utensils required or permitted or allowed by this act, shall be made, placed, affixed, and kept at the expense of the distiller, rectifier, or compounder, in proper repair and condition, to the satisfaction of the supervisor of Excise, and shall from time to time be altered and repaired at the expense of such distiller, rectifier and compounder, as such officer shall require; and that the several locks and keys which shall be necessary for the locking and securing any still or any other vessel or cock, or other utensil, shall be supplied by such supervisor at the expense of such distiller, rectifier, and compounder; and such officer shall and may from time to time cause all and every or any such locks and keys to be altered, repaired, or renewed, as he may think fit and necessary for the purposes of this act, at the expense of such distiller, rectifier, or compounder; and if any distiller, rectifier, or compounder shall not, at his own expense and charge, before he shall proceed to brew or distil, rectify or compound spirits, provide, place, and affix, and shall not afterwards maintain, all such coverings, fastenings, cocks, pipes, pumps, troughs, and utensils, or any of them, to the satisfaction of the proper supervisor, or shall not cause the same or any of them to be

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altered, amended, repaired, or renewed, or shall not on demand pay such supervisor for any such locks or keys as such supervisor shall supply, alter, amend, repair, or renew for the purposes aforesaid, or if at any time any such cover, fastening, cock, pipe, pump, lock, or key shall be broken, damaged, or injured, or if any person, not being the proper officer of Excise, shall open the same or any of them, or shall make, procure, or use, or cause to be made, procured, or used, any false or duplicate key, or any instrument for breaking or opening any such cock, lock, or fastening, or if any distiller, rectifier, or compounder shall, in the construction of any such cover, fastening, cock, pump, or pipe, cause or procure the same to be so made, or shall knowingly use the same or any of them when so made, as that the said vessels or utensils, or any of them, may be employed, opened removed, filled, or emptied in the absence of the proper officer of Excise, so as to avoid or in any manner defeat the security intended to be given or provided by any of the regulations of this act, every such distiller, rectifier, or compounder, or person so offending, shall for each and every such offence forfeit the sum of 200*l.*"

Penalty, 200*l.*

Each back and fixed vessel for keeping spirits shall have a dipping place, constructed as herein, on penalty of 200*l.*

Sect. 24. "That at or near the top of every fermenting wash back, and at or near the top of every fixed and entered vessel for storing or keeping spirits in the premises of any distiller, rectifier, or compounder, dealer in or retailer of spirits, there shall be an opening or dipping place, at which the officer may conveniently take his dip or gauge of the contents of such vessel, and a plate of brass or other metal shall be fixed and shall always remain fixed at such dipping place, to secure the same from being worn or altered, and all such backs and vessels respectively shall be gauged and tabled by the officers of Excise in such manner as shall be directed by the commissioners of Excise in that behalf, and shall be placed and kept in convenient situations, and shall be at all times easy of access to the officer, for his more readily and effectually inspecting and examining it in every part, and taking the dip or gauge thereof; and if in any such back or vessel there shall not be such opening or dipping place so constructed and secured as aforesaid, or if any such back or vessel shall not be placed and kept in a convenient situation, and easy of access to the officer as aforesaid, or if the officer shall at any time, by any means whatever, or in any manner whatever, be prevented from ascertaining the quantity and gravity, or either of them, of any wort or wash contained in any fermenting wash back, or the quantity or strength of any low wines, feints, or spirits in any vessel, then and in every such case such distiller, rectifier, or compounder, dealer, or retailer, offending therein, shall forfeit the sum of 200*l.*"

Penalty if dipping-place of vessel be altered, 200*l.*

Sect. 25. "That if the opening or dipping place, or the level of any still, back, receiver, or other vessel or utensil as aforesaid, shall be in any manner altered, or if any device or contrivance whatever shall be used to deceive any officer in taking any dip or gauge of any still, back, receiver, or other vessel or utensil, as aforesaid, or to prevent any officer from taking a true account of the quantity of wort, wash, low wines, feints, or spirits which may be contained in any still, back, receiver, or other vessel or utensil as aforesaid respectively, then and in each and every such case such distiller, rectifier, or compounder, dealer, or retailer offending therein shall forfeit the sum of 200*l.*"

Penalty if position or size of vessel be altered without notice, 200*l.*

Sect. 26. "That if the situation or position of any entered still, back, receiver, or other vessel, utensil, or pipe as aforesaid, shall be in any manner altered at any time after such entry as is by this act required shall have been made or given thereof, or the size of any still, back, receiver, or other vessel or utensil as aforesaid shall be in any manner altered at any time after the proper officer shall have ascertained the capacity or content thereof, unless on such notice as is herein provided, then in each and every such case such distiller, rectifier, or compounder, dealer, or retailer offending therein shall forfeit the sum of 200*l.* Provided always, that it shall and may be lawful for such distiller, rectifier,

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

or compounder, dealer, or retailer to alter the size, situation, or position of any entered still, back, receiver, or other vessel, or utensil, or pipe, or to erect and set up any new still, back, receiver, or other vessel, utensil, or pipe, on giving two days' notice in writing of such intended alteration to the proper officer, specifying the particular still, back, receiver, or other vessel, utensil, or pipe, and the size, situation, or position of which is intended to be altered, and making entry of such new still, back, receiver, vessel, utensil, or pipe in manner hereinbefore mentioned, and conforming in all respects to the regulations in this act contained in that behalf."

Commissioners of Excise may authorize distillers to use their present utensils.

Sect. 27. "Provided always, that it shall and may be lawful for the commissioners of Excise, by any instrument in writing under the hands of two or more of them, to permit and allow any licensed distiller or rectifier, working under the regulations of any act or acts in force prior to the passing of this act, to keep or use such of the vessels or cocks already fixed or used in the distillery of such distiller, as shall in the judgment of such commissioners be secure, and adapted to the purposes for which such vessels or cocks are respectively prescribed or required by this act: and that no distiller to whom such permission shall be granted shall be liable to any of the penalties imposed by this act, in respect of such distiller keeping or using any such vessels or cocks so permitted, although the same may not be conformable with the provisions of this act; any thing hereinbefore contained to the contrary notwithstanding."

Officer may order water to be drawn off from worm tub, for examination of worm and tub.

Penalty for refusal, 200*l.*

Sect. 28. "That whenever any officer of Excise shall require that the water contained in any worm tub in or belonging to any distillery, at any time when such still shall not be at work, shall be drawn or run off, and the tub and worm cleansed, the water shall forthwith be drawn or run off, and the tub and worm cleansed by the distiller, his or her servants or workmen accordingly; and if the water shall not be so drawn or run off at the request of such officer, and the tub and worm forthwith cleaned, and the water kept and continued out of such worm tub for the space of two hours, or until the surveying officer has finished his inspection and examination of such tub and the worm therein, the distiller in whose distillery such worm tub shall be situate shall forfeit the sum of 200*l.*; and it shall be lawful for such officer to draw or run off and keep drawn and run off such water, or so much thereof, and for so long time, as he shall think necessary."

True content to be cut, branded, or painted on moveable casks, and also name and place of stock of trader.

Sect. 29. "That every distiller, rectifier, or compounder, and dealer in spirits, shall cause to be legibly cut, branded, or painted on the outside of both of the heads or ends of each rolling or moveable cask used by him or her for keeping or delivering out spirits, and shall at all times keep thereon so cut, branded, or painted, the full and true number of gallons which every such cask shall be capable of containing, together with his or her name or firm of trade, and the name of the place where his or her stock is kept; and every such cask which shall be found containing spirits without the full and true number of gallons which the same is capable of containing, and the name and place aforesaid, being so cut, branded, or painted thereon, together with the spirits contained therein, shall be forfeited, and shall and may be seized by any officer of Excise."

Entry to be made of the several places and utensils of trade.

Sect. 30. "That before any distiller shall give any notice of brewing or making any wort or wash, as by this act is required, and also before such distiller shall commence to brew or make any wort or wash, and before any rectifier or compounder shall receive, rectify, or compound any spirits, or any dealer or retailer shall receive or sell any spirits, each distiller, rectifier, or compounder, dealer, and retailer respectively shall make entry by delivering or causing to be delivered to the proper collector of Excise, or other officer authorized to receive the same, an account in writing, signed by such distiller, rectifier, or compounder, dealer, and retailer respectively, to be entered and registered by such

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

collector or other officer, setting forth his or her name or names, and place or places of abode, and the place where the premises intended to be entered of such person or persons is or shall be situated, and also setting forth a true description of all and every vessel and vessels, and utensil and utensils whatsoever, erected and intended to be therein used in or for the purposes of such trade or business respectively, and the number of gallons which each and every or any still, together with the head thereof, is capable of containing, and specifying fully and distinctly in every such account the purpose for which each vessel and utensil is intended to be used; and also an account of the several houses, rooms, and places wherein any part of the business of such person is to be carried on, or for distilling, rectifying, or compounding any spirits, or in which any spirits are to be kept; and in such written account every such utensil, and also every such house, room, or place, shall be distinguished, by the separate and distinct number and name relating thereto respectively, which shall have been painted thereon pursuant to the provisions of this act; and every such account shall be in such form, and shall contain such particulars, as shall be from time to time directed and required or authorized by the commissioners of Excise."

Utensils and stores shall be marked.

Sect. 31. "That every distiller, or rectifier, or compounder, dealer, and retailer respectively, shall paint or cause to be legibly painted, and shall keep or cause to be kept so painted, upon some conspicuous part of every utensil intended to be used by him or her in his or her trade or business respectively, and on the outside of the door of every apartment and place wherein any part of the trade or business of such person is to be carried on, or wherein any spirits are to be kept, the name of each such utensil, apartment, or place, according to the purpose for which the same is respectively intended to be used; and shall also paint in manner aforesaid separate numbers relating to each and every such utensil, apartment, and place, in arithmetical progression, beginning with number one for each denomination, kind, or description of utensil, apartment, or place, upon pain of forfeiting for every neglect thereof the sum of 50*l.*"

Penalty for neglect, 50*l.*

Drawing or description shall be given, showing course of every fixed pipe in distillery.

Sect. 32. "That together with every such account there shall be delivered a drawing or drawings, or description or descriptions, distinctly showing the course, direction, construction, and use of all fixed pipes to be used by any distiller, rectifier, or compounder, and of all and every branch and branches thereof, and of all and every cock and cocks therein, together with every place, vessel, or utensil from or to or with which any such pipe shall lead or communicate; and every pipe to be used by such distiller, rectifier, or compounder, except for the conveyance of water and spent wash only, shall be so fixed and placed as to be capable of being inspected and examined by the officer for and through the whole of its length or course, and shall be painted and kept painted as hereinafter mentioned; that is to say, every pipe for the conveyance of wort or wash shall be painted of a red colour, every pipe for the conveyance of low wines or feints shall be painted blue, every pipe for the conveyance of spirits shall be painted white, and every pipe for the conveyance of water shall be painted black; and if any pipe shall be used by any distiller, rectifier, or compounder, not set forth as aforesaid, or for any other purpose than shall be set forth as aforesaid, or which, except as aforesaid, shall not be fixed or placed or painted and kept painted as herein directed, or which shall be painted otherwise than as herein directed, such distiller, rectifier, or compounder shall forfeit the sum of 50*l.*"

Pipes used in distillery to be painted.

Penalty, 50*l.*

Distiller shall not enter any utensil to be used for more than one purpose, on penalty of 2 0*l.*

Sect. 33. "That it shall not be lawful for any distiller to set forth in the account by this act required to be signed and delivered, that any still or vessel mentioned therein is intended to be used for more than one purpose respectively; and every such entry in which any still or other vessel shall be described by any distiller as intended to be used for two or more purposes shall, in respect to such still or vessel, be deemed

(15). *Spirituous liquors.*

6 Geo. 4, c. 80. Penalty for having any utensils or place not entered, &c. 500*l.*

and taken to be void; and such distiller shall in every such case forfeit the sum of 200*l.*"

Sect. 34. "That if any still or vessel, or utensil whatever, shall at any time be used or applied by any distiller, rectifier, or compounder, for or to any purpose connected with the distillation, rectification, or compounding of spirits, or if any fixed cask shall at any time be used by any distiller, rectifier, or compounder, or dealer or retailer as aforesaid, for holding or keeping spirits; or if any house, room, or place shall be used by any distiller, rectifier, or compounder, dealer or retailer of spirits, for the carrying on any part of the process of distillation, rectification, or compounding of spirits, or for the keeping of any spirits, which still, vessel, utensil, cask, house, room or place, shall not have been set forth, or shall not have been numbered as set forth, or shall be in any other place than shall be set forth, or shall be used or applied for or to any other purpose than shall be set forth, or shall not in all respects correspond with the representation thereof, as set forth in the account by this act required to be signed and delivered by such person; then and in every such case he or she so offending shall forfeit the sum of 500*l.* for every such offence; and every such still, vessel, or other utensil, or cask, and all spirits, or materials for distilling spirits, which shall or may be contained in any such still, vessel, utensil, or cask, or which shall or may be found in any such house, room, or place, shall be forfeited, and may be seized by any officer of Excise."

Houses for rectifying or compounding spirits not to be used within quarter of a mile of still house, nor shall a still house be used within quarter of a mile of house for rectifying or compounding, or of another distillery, penalty, 500*l.* per week.

Sect. 35. "That no person or persons whomsoever shall erect, set up, enter, or make use of any house or premises whatsoever, in England, for rectifying or compounding spirits, or for receiving or keeping spirits, by any rectifier or compounder of spirits, or for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits, within the distance of one quarter of a mile in a direct line from any other house or premises which shall be entered or used for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits; nor shall any person or persons whomsoever erect, set up, enter, or make use of any house or premises whatsoever, in England, for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits, within the distance of one quarter of a mile in a direct line from any other house or premises which shall be entered or used for rectifying or compounding spirits, or for receiving or keeping spirits, by any rectifier or compounder of spirits, or for preparing wort or wash, or for making or distilling spirits, or for receiving or keeping spirits, by any distiller or maker of spirits, on pain of forfeiting, in each and every such case, the sum of 500*l.* for every week that any such house or premises shall be erected, set up, entered, or used respectively, contrary to such prohibition as aforesaid; and all and every entries or entry of any such house or place so made use of contrary to the true intent and meaning of this act shall be null and void to all intents and purposes whatsoever. Provided always, that the prohibition and penalty aforesaid shall not extend or apply, or be deemed or construed to extend or apply, to or in respect of any house or premises which may have been erected, set up, entered, used, occupied, or employed contrary to the prohibition aforesaid for preparing wort or wash, or making or distilling spirits, or for rectifying or compounding, or for receiving or keeping spirits respectively by any distiller or maker of spirits, or any rectifier or compounder of spirits, on the 5th day of April, in the year 1825, so long as such house or premises continue to be so entered and used, and so long as no part of any such house or premises entered, used, occupied, or employed by any distiller or maker of spirits, and any part of any such house or premises, entered, used, occupied, or employed by any other distiller or maker o spirits, or any rectifier or compounder of spirits, shall have any way, opening, or communication whatsoever by which any wort, wash, or

spirits can be removed or conveyed from the one into the other of such houses or premises, other than by carriage of a cart or waggon through and by an open street or road."

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Distiller and rectifier or compounder not to be a maker of beer, sweets, vinegar, cyder, or perry, or refiner of sugar, &c.

Sect. 36. "That no distiller or maker of spirits, or rectifier or compounder of spirits, shall upon the same premises carry on the trade or business of a distiller or maker of spirits, or of a rectifier or compounder of spirits, and of a brewer of beer, or of a maker of sweets, vinegar, cyder, or perry, or of a refiner of sugar; nor shall any distiller or maker of spirits enter or make use of any house or premises for preparing wort or wash, or making, distilling, or keeping spirits; nor shall any rectifier or compounder of spirits enter or make use of any house or premises for rectifying or compounding or for keeping spirits, having any communication, opening, or way, internally, or with or into, or through any enclosed or private yard, garden, field, passage, private road or place, with another house or premises used or employed by any brewer of beer, or maker of sweets, vinegar, cyder, or perry, or refiner of sugar, or by any dealer in or retailer of spirits, on pain of forfeiting for every such offence the sum of 200*l.* Provided always, that where any house or premises shall appear to have been so entered and made use of as aforesaid by any person or persons on the 5th day of April, 1825, and shall continue to be so entered and used on the 10th day of October, 1825, it shall be lawful for the commissioners of his Majesty's Treasury, or any three of them, to grant by order in writing, their special licence to such persons to continue such use of such premises, for such time, and upon such terms and conditions, and upon payment of such annual sum or sums of money for defraying the expenses of extra survey of such premises, as they may think fit."

Penalty. 200*l.*

No entry of any distillery or utensils shall be withdrawn, whilst wash or other materials for distillation remain.

Sect. 37. "That no distiller who shall have made entry of any distillery, place, or utensils for the purpose of distilling spirits shall be permitted to withdraw such entry whilst any wash, low wines, or other materials preparing, or fit for distillation, are remaining in any of the places or in any of the utensils so by him or her entered as aforesaid; but in every such case the officer of Excise under whose survey such distiller shall then be shall continue to survey the distillery, places, and utensils mentioned in each such entry until all the wash, low wines, and other materials shall be worked off, and the duties charged on the produce thereof paid; or until the spirits made therefrom shall be legally removed from and out of the said entered places, and then, and not till then, shall any such entry made as aforesaid be withdrawn."

Distillers, rectifiers, and compounders shall affix board over distillery gate, importing they are licensed, on penalty of 50*l.*

Sect. 38. "That every distiller, rectifier, or compounder who shall be licensed under this act shall forthwith cause to be painted, with letters publicly visible and legible, at least three inches long, the name or firm of such distiller, rectifier, or compounder, at full length, and, after such name, the words 'licensed distiller,' 'rectifier, or compounder,' as the case may be; and every such distiller, rectifier, or compounder shall cause such painting to be in some conspicuous place on the outside of the front of the distillery or entered premises of such distiller, rectifier, or compounder, over the gate or entrance door thereto, not more than three feet from the top of such gate or entrance door; and every such distiller, rectifier, or compounder shall preserve and keep up such painting during the continuance of his, her, or their licence; and in default of making such painting, or keeping the same so made, every such distiller, rectifier, or compounder shall for every such offence forfeit the sum of 50*l.*; and if any person, on or before whose house or other place any painting, board, or sign shall be affixed or erected, importing that such person is a distiller, rectifier, or compounder, or exercises or carries on the trade of a distiller, rectifier, or compounder, or purporting that such person is licensed so to do, shall not at the time be duly licensed for such purpose, then and in every such case every such person shall forfeit the sum of 50*l.*"

Penalty on unlicensed persons affixing such board, 50*l.*

Officer suspecting

Sect. 39. "That in case any officer or officers of Excise shall know or

(15). *Spirituous liquors.*

6 Geo. 4, c. 80. and making oath before justice, &c. may obtain special warrant to break open house, &c. and seize spirits,

have cause to suspect that any private or concealed still, back, or other vessel, for making worts or wash, or for making or distilling low wines or spirits, or any privately made spirits or low wines, or any wash or other materials preparing for distillation, are set up or kept in any house or place, then and in such case, if such house or place shall be within the limits of the chief office of Excise, upon oath made by such officer or officers before one or more justice or justices of the peace of the county, city, or liberty where such house or place shall be, or before the commissioners of Excise, or any two or more of them; or, in case the same shall be in any other part of England, upon oath made by such officer or officers before one or more justice or justices of the peace of the county or place where such officer or officers shall suspect the same to be so set up and kept, setting forth the ground of such his or their suspicion, it shall and may be lawful to and for the said commissioners of Excise, or justice or justices of the peace respectively, before whom such affidavit or affidavits shall be made, if he or they shall judge it reasonable, by warrant under his or their respective hands and seals, to authorize and empower such officer or officers, by day or by night (but if in the night-time, then in the presence of a constable or other lawful officer of the peace, who are hereby required to be aiding and assisting therein), to break open the doors or any part of such house or place, where he or they shall so know or suspect such private or concealed still, back, or other vessel, spirits, low wines, wash, or materials for distillation, are so set up and kept, and to enter into such house or place, and to seize all and every such still, backs, or other vessels, and all such spirits, low wines, wash, and other materials preparing for distillation, which he or they shall find and discover, and either to detain and keep the same in the house or place where found, or to remove the same to the office of Excise next to the place where the same shall be so discovered and found;

and if not claimed by the owner within ten days, the same shall be forfeited, and the proprietor, &c. shall pay 200*l.* for every such place and still, &c. found therein.

and in case the same shall not within ten days next after such seizure be claimed by the true and lawful owner thereof, then the said stills, backs, and other vessels, spirits, low wines, wash, and other materials for distillation, shall be absolutely forfeited, and the proprietor of any such private or concealed still, back, or other vessel, or the person in whose custody the same shall be found, whether such seizure be claimed or not, shall forfeit and lose for every place in which every such private still, back, or other vessel shall be so found, and also for every such still, back, and vessel found therein, the sum of 200*l.*; and if any person or persons shall obstruct, oppose, molest, or hinder any officer or officers of Excise, or others acting in their assistance, in the due seizing any such private or concealed stills, backs, or other vessels, spirits, low wines, wash, or other materials for distillation, or in detaining or keeping the same in the place where found, or in removing the same, or any of them, after seizure, to the next office of Excise as aforesaid, then and in every such case every person so offending shall forfeit the sum of 200*l.*"

Penalty on obstructing officer, 200*l.*

Officers empowered to enter distilleries; and if obstructed, distillers to forfeit 200*l.*

Sect. 40. "That it shall and may be lawful for any officer or officers of Excise at all times, as well by night as by day, to enter into every house, distillery, still-house, out-house, and place whatsoever of or belonging to or made use of by any distiller of spirits, and to gauge, measure, and take an account of every still or other vessel or utensil of any kind of or belonging to or kept therein by any such distiller, and to gauge and take an account of the quantity and strength of all spirits, low wines, and feints which shall be from time to time made or distilled, and of the quantity and gravity of all wort and wash which shall be from time to time made use of in the distillery of such distiller, and of all bub and other compositions for exciting or producing fermentation in any wort or wash, and of all such spirits and materials for making or distilling of spirits which shall be in such distillery or in the possession of such distiller; and if any officer of Excise, or any person or persons acting in his aid or assistance, shall be hindered, obstructed, or prevented by any distiller, or by any servant or person acting for or in

the employment of such distiller, from entering, or shall not be permitted to enter into any distillery, or any house, outhouse, or other place whatsoever, of or belonging to or made use of by such distiller, or, having entered, shall be hindered, obstructed, or prevented from doing or executing any part of his duty in the execution of this act, such distiller shall for every such offence respectively forfeit the sum of 200*l.*"

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Sect. 41. "That in case any officer of Excise, after having demanded admittance into the distillery of any distiller, rectifier, or compounder, and having declared his name and business at the gate or entrance door or at any window of such distillery, shall not be immediately and without delay admitted into such distillery, such distiller, rectifier, or compounder shall for every such offence forfeit the sum of 200*l.*; and if such officer shall not be immediately and without delay admitted into such distillery of any distiller, rectifier, or compounder, after having so demanded such admittance, it shall and may be lawful for such officer, and any person or persons acting in his aid or assistance, at all times, as well by night (if in the presence of a constable or other peace-officer) as by day, to break open by force any of the doors or windows or break through any of the walls of such distillery as shall be necessary to enter such distillery."

Penalty on not admitting officer after his declaring his name and business, 200*l.*; and officer may break open distillery.

Sect. 42. "That if, on demand of any officer of Excise, made in the distillery of any distiller, or in the entered premises of any rectifier or compounder of spirits, strong, safe, and convenient ladders shall not be provided, and conveniently and firmly placed, and of length sufficient to enable the surveying officer to ascend to and examine and descend from any vessel or utensil in any such distillery, or rectifying or compounding house or premises, or to gauge or ascertain the content or capacity of any vessel or utensil therein; or if any such ladder shall not be fixed at or in any part of such vessel or utensil where such officer shall require; or if on any visits made by any officer of Excise, on demand of any such officer, sufficient lights and sufficient aid or assistance shall not be supplied for the purposes of his or their gauging or ascertaining the content or capacity of any vessel or utensil, or of searching for and gauging and taking an account of all wort, wash, bub, low wines, feints, and spirits, and of all materials fit or proper for distillation in such distillery, or in the possession of such distiller, and all spirits in the possession of such rectifier or compounder, as well by day as by night, every distiller, rectifier, or compounder so offending, or on whose entered premises such neglect or offence shall take place, shall in any of the cases aforesaid for every such offence forfeit the sum of 100*l.*"

Distillers, rectifiers, and compounders shall furnish officer with ladder and lights, on penalty of 100*l.*

Sect. 43. "That it shall and may be lawful to and for any officer or officers of Excise, or any person or persons acting in his or their aid or assistance, by night or by day, to break up any ground in any part of the distillery or entered premises of any distiller, rectifier, or compounder, or any ground near adjoining such distillery or premises, or any wall or partition thereof or belonging thereto, or other place, to search for any pipe or cock, or any private conveyance or utensil, and upon finding any such pipe or conveyance leading therefrom or thereto, to break up the ground, house, wall, or other place through or into which such pipe or other conveyance shall lead, and to break up or cut away any such pipe, cock, or other conveyance, and to turn any cock or cocks, and to examine whether such pipe or other conveyance may or can convey or conceal any wort, wash, or other liquor fit for distillation, or low wines, feints, or spirits, from the sight or view of the officer, so as to hinder or prevent him from taking or keeping a true account thereof."

Officers may break up ground in distillery, to search for private pipes, &c.

Sect. 44. "That it shall not be lawful for any distiller to make or brew at the same time any wort or wash, or to make or distil any spirits, from malt, corn, or grain, or any mixture thereof, and from sugar or potatoes, or any mixture thereof, respectively, or to make or brew any wort or wash, or distil any spirits, from any other materials

Distillers shall not distil at the same time spirits from grain and from sugar, or any other material.

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6 Geo. 4, c. 80.

whatsoever; and if any such distiller shall at the same time make or brew any wort or wash, or shall make or distil any spirits, from malt, corn, or grain, or any mixture thereof, and from sugar or potatoes, or any mixture thereof, respectively, or shall at any time make or brew any wort or wash or distil any spirits from any other materials whatsoever, such distiller shall forfeit the sum of 200*l.*; and all such wort, wash, and spirits shall be forfeited, and may be seized by any officer of Excise" (*a*).

Penalty, 200*l.* &c.

Notice to be given by distiller of his intention to use sugar or potatoes.

Sect. 45. "That every distiller who shall under the regulations of this act intend or desire to distil spirits from worts or wash brewed and made from sugar or potatoes only shall, six days before he shall commence to brew or make any wort or wash, give notice in writing to the proper officer surveying such distillery, in which notice shall be stated that such distiller intends to use sugar or potatoes only, not being mixed with any other materials whatever; and if, at any time after such notice shall have been given, any corn, grain, or malt, ground or bruised, or other material for distillation, except sugar or potatoes, according to such notice as aforesaid, shall be found in such distillery, or in any store, mill, or other premises thereto belonging; or if any wort or wash made of any materials save and except sugar or potatoes only, as the case may be, according to such notice, shall be found in the distillery of such distiller, or in any store belonging to such distillery, then and in each and every such case such distiller shall (except in the case hereinafter provided) forfeit the sum of 200*l.*"

Penalty for using grain after such notice, 200*l.*

Distillers using sugar or potatoes may commence using grain at expiration of one month, on giving notice.

Sect. 46. "Provided always, that if any distiller who shall have given any such notice of using sugar or potatoes only as aforesaid shall intend to commence or to recommence to use the other of them, or to use corn or grain and malt, at any time when there shall not be any wort or wash, or sugar or potatoes respectively, in the distillery of such distiller, such time being at least one calendar month distant from the time such distiller began to use sugar or potatoes only under any such notice, it shall be lawful for such distiller, on giving six days' previous notice to the proper officer, so to commence or recommence to use the other of them, or to use corn or grain and malt, and such distiller shall not thereafter be liable to any such penalty aforesaid. Provided also, that if any distiller using corn or grain and malt shall be desirous of commencing or recommencing to use sugar or potatoes only as aforesaid, at any time when there shall not be any wort or wash, or malt, corn, or grain in the distillery of such distiller, such time being at least one calendar month from the time such distiller shall have commenced or recommenced using corn or grain and malt as aforesaid, it shall be lawful for such distiller, on giving six days' notice as aforesaid, so to commence or recommence to use sugar or potatoes only."

Distiller using grain may commence using sugar or potatoes only at expiration of a month, on giving notice.

Scotch and Irish distillers may distil from sugar or potatoes.

Sect. 47. "That from and after the 5th day of January, 1826, it shall be lawful for any licensed distiller in Scotland or Ireland to make or brew any wort or wash, and to make or distil spirits from sugar only, or from potatoes only, any thing in any other act or acts of Parliament to the contrary notwithstanding. Provided always, that whenever sugar or potatoes are used for that purpose, the same shall be done under the like rules and regulations as are contained in a certain act, made in the fourth year of the reign of his present Majesty, for granting certain duties of Excise upon spirits distilled from corn or grain in Scotland and Ireland, and upon licenses for stills for making such spirits, and to provide for the better collecting and securing such duties, and for the warehousing of such spirits without payment of duty, for making or brewing wort or wash and making and distilling spirits from malt only, unmixed with any unmalted corn or grain, except that in the annual account of every such distiller, so far as shall relate to spirits made or

(*a*) But now see the 2 & 3 Will. IV. c. 74, *post*, which authorizes licensed distillers to distil spirits from mangelwurzel.

distilled from sugar, he shall be chargeable and charged with duty after the rate or proportion of one gallon of proof spirits for every four degrees of the declared gravity of the worts from which such spirits were made or distilled."

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Sect. 48. "Provided always, that if at any time or times during the recess of Parliament it shall, from the excessive price of corn, appear expedient to his Majesty, his heirs or successors, to prohibit the making of low wines and spirits from barley, malt, and any other sort of grain, and from meal and flour, or any mixture thereof, it shall and may be lawful to and for his Majesty, his heirs and successors, from time to time, by his or their royal proclamation or proclamations, to be issued by and with the advice of his or their privy council, or by his or their order in council, to be published in the London Gazette from time to time, to prohibit the making, extracting, or distilling of any kind of low wines or spirits from barley, malt, and any other sort of grain, and from meal and flour, or any mixture thereof, for any time or times during such recess, or until twenty days after the commencement of the then next session of Parliament."

During recess of Parliament, the king may, by proclamation, prohibit distillation of spirits from corn.

Sect. 49. "That all wash which shall be made in the distillery of any distiller shall be fermented in the fermenting wash backs of such distiller, and shall be conveyed directly from thence into the wash charger, and shall be conveyed from such charger into the wash still or stills, there to be made or distilled into low wines, and all low wines shall be conveyed directly from the safe at the worm end of the wash still or stills into the low wines receiver or receivers, and shall from thence be pumped up or conveyed into the low wines and feints charger or chargers, and shall be conveyed directly from such charger or chargers into the low wines still or stills, there to be redistilled, and all spirits produced by such redistillation shall be conveyed directly from the safe at the worm end of the low wines still or stills into the spirits receiver or feints receiver or receivers, and so much of such spirits as shall be conveyed into such feints receiver or receivers shall be pumped or conveyed directly from thence into the low wines and feints charger or chargers, and shall be conveyed directly from such charger or chargers into the low wines still or stills to be redistilled, and the produce of the last-mentioned redistillation, and of every other redistillation, shall in like manner be conveyed directly from the safe at the worm end of the low wines still or stills into the spirit receiver, or into the feints receiver or receivers, and no feints conveyed into such feints receiver or receivers shall in any case be removed from thence, except by pumping or conveying such feints directly into the low wines or feints charger or chargers, from whence such feints shall be conveyed directly into the low wines still or stills for redistillation, until the whole of such feints shall be made into spirits, and conveyed and run into the spirit receiver, and no spirits conveyed into the spirit receiver shall be redistilled or shall be removed from such receiver, except into the cellar or storeroom of the distiller, in the manner hereinafter provided; and if any distiller shall ferment or suffer to be fermented any wash, or shall remove or distil or suffer to be removed or distilled any wash, low wines, feints, or spirits, contrary or otherwise than according to the directions and provisions aforesaid, or shall not convey and run the whole of the spirits made or distilled by him into the spirit receiver, such wash, low wines, feints, and spirits respectively, together with all vessels and utensils wherein the same may be contained, shall be forfeited, and may be seized by any officer of Excise; and the distiller so offending shall in every such case forfeit the sum of 200*l.*, or 20*s.* for every gallon of such wash, low wines, feints, or spirits so removed or distilled, and not conveyed and run into the spirits receiver, at the election of the commissioners of Excise, or persons who shall inform or sue for the same."

General directions as to mode and course in which wash, &c. shall be conveyed through the several utensils.

Penalty on default, 200*l.*; or 20*s.* for every gallon of wash, &c. not so conveyed.

Sect. 50. "And for more effectually securing the duties on spirits granted by this act, and regulating the process of the distillation of such

Distiller shall brew and distil in alternate periods only.

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

spirits, be it enacted, that in the distillery of every distiller, the periods of brewing and distilling shall be always alternate and distinct periods—one to be called the brewing period, and the other the distilling period; and that no wort, wash, low wines, or feints shall be distilled in any such distillery, and that no still in any such distillery shall be made use of from the commencement of any such brewing period until twelve hours after the expiration thereof; that is to say, from the commencement of any process of wetting, brewing, or mashing any malt, corn, or grain, or sugar, or potatoes, until twelve hours after every such process shall have ceased, and all the wort or wash in such distillery shall have been collected into the fermenting backs in such distillery; and that no malt, or corn, or grain, or sugar, or potatoes shall be wetted, brewed, or mashed, nor shall any wort or wash be made or produced in any distillery during any distilling period; that is to say, from the commencement of the distillation of any wort or wash in any distillery, until after all the wort or wash in such distillery, or possession of such distiller, and all the low wines or feints in such distillery, or possession of such distiller, shall have been distilled into spirits and conveyed and run into the spirits receiver of such distillery, save and except such feints as shall have been produced by the last redistillation of the last charge of the low wines still or stills, and until the several furnace doors of each and every still in such distillery shall have been locked and secured by the proper officer; and if at any time during such brewing period any wort or wash or low wines or feints shall be distilled, or if any still shall be made use of in the distillery of any distiller, or if at any time during such distilling period any malt, or corn, or grain, or sugar, or potatoes shall be wetted, brewed, or mashed, or any wort or wash shall be made or produced in the distillery of any such distiller, then and in each and every such case such distiller shall forfeit the sum of 500*l.*"

Penalty for acting contrary hereto, 500*l.*

Distiller shall give notice of each brewing of wort, on penalty of 50*l.*

Sect. 51. "That every distiller shall from time to time, at least six hours before he shall mash or brew as aforesaid, deliver to the proper officer of Excise a notice in writing, in which shall be set forth the day and hour when such mashing or brewing is to be commenced and made, and shall then, or within six hours after any such brewing shall be finished, deliver as aforesaid the true quantity and weight of the materials intended to be or which shall have been used or employed, and whether grain, or sugar, or potatoes respectively; and in case any mashing or brewing of any materials is commenced or made in the distillery of any distiller without such notice having been given as aforesaid, such distiller shall forfeit the sum of 50*l.*; and it shall not be lawful for any such distiller to mix or cause to be mixed in any fermenting back or vessel the produce of two or more different brewings of wort or wash, or any part thereof, on pain of forfeiting for every such offence the sum of 200*l.*"

The produce of each brewing to be kept separate, on penalty of 200*l.*

Notice to brew, and to recommence brewing.

Sect. 52. "That every distiller, after having made such entry as is by this act required, shall, before commencing to brew or make any wort, and in like manner every such distiller who shall at any time have discontinued making or brewing any wort for any longer period than one calendar month shall, before recommencing to make or brew any wort, give six days' notice in writing to the supervisor or officer surveying the distillery of such distiller, in which notice shall be set forth the day on which and sorts of materials with which such distiller intends to commence or recommence (as the case may be) making or brewing wort, and specifying the gravity of the wort or wash intended to be made in the distillery of such distiller; and in any such notice such gravity as specified shall not be less than fifty degrees, nor more than ninety degrees; and in case such distiller shall at any time be desirous of using wort of any other gravity than shall have been specified in such notice, but not being of a gravity less than fifty degrees, nor more than ninety degrees, such distiller shall in like manner, six days before the day on which he shall intend to use wort at any other gravity, deliver a notice,

(15). *Spirituous liquors.*

6 Geo. 4, c. 60.

specifying the gravity of the wort intended to be used in such distillery after the day specified in such last-mentioned notice, such distiller not having on such day any wort or wash in the distillery or possession of such distiller, and such day being at least one calendar month distant from the day mentioned in any last preceding notice which shall have been given by such distiller; and if any distiller shall commence or after such discontinuance shall recommence the brewing or making any wort, or if any wort or wash shall be found in the distillery or possession of any such distiller who shall not have given such notice in manner and in the respective cases aforesaid, or at any time before the day set forth as aforesaid in any such notice, or if at any time there shall be found in the distillery or possession of any distiller, except in the mash tun or wort underback or coolers or coppers in such distillery, any wort or wash, the gravity whereof shall exceed the particular gravity which shall have been specified in any such notice, then and in each and in every such case all such wort or wash shall be forfeited, and may be seized by any officer of Excise, and such distiller shall forfeit the sum of 200*l.*: Provided always, that no vessel used by any distiller shall be deemed a wort underback within the meaning of this act, unless the depth of such vessel shall be in every part thereof three feet at the least, nor unless such vessel shall be so situate in the distillery of any distiller, as that the wort shall run directly into the same from the mash tun."

Penalty on neglect 200*l.* &c.

Sect. 53. "Provided always, that any such saccharometer may be used for ascertaining the gravity of wort or wash under this act, as shall from time to time be prescribed for that purpose by any order of the commissioners of Excise, or any four of them; and that every degree of gravity to be ascertained by any saccharometer under the provisions of this act shall be calculated in the following manner; that is to say, that distilled water being assumed as unity at the temperature of sixty degrees by Fahrenheit's thermometer, every degree of such gravity shall be correspondent to a thousandth part of the specific gravity of such water; and all wort or wash shall for the purposes of this act be deemed and taken to be of the gravity at which the said saccharometer shall, on the application thereof, denote or indicate such wort or wash to be."

Any saccharometer prescribed by the commissioners of Excise may be used.

How degrees shall be ascertained.

Sect. 54. "That all wort intended to be run or conveyed into any fermenting back of any such distiller shall be conveyed into and collected therein within the space of eight hours after the running or conveyance of such wort shall have commenced into any such back, and the distiller shall immediately and without delay reduce all such wort to, should it exceed, the particular gravity which shall have been specified in any such notice, and deliver to the proper officer a declaration in writing, specifying the number of the back or backs in which such wort is contained, and the particular gravity of such wort, and also setting forth the quantity thereof, by stating the number of dry inches, that is to say, the number of inches not occupied or wetted by the wort, being the space between the proper dipping-place of such back and the surface of the wort therein; and no yeast, or barm, or bub, or other matter or thing capable of causing fermentation, shall be added to or mixed with the wort, or allowed to be in such fermenting back, for the space of two hours next after such wort shall have been collected in such fermenting back or backs, and reduced as herein directed, and after such declaration shall have been given thereof as aforesaid, unless the proper officer shall, within such two hours, have taken an account of the quantity and gravity of such wort; and if any wort shall be conveyed into and collected in any fermenting back or backs in any other manner than as is therein directed, or if the gravity of all such wort shall not be reduced as herein directed, or if such declaration shall not be given as herein required, or if any untrue declaration shall be given of the quantity or gravity of any such wort, or if any yeast,

Declaration shall be given of quantity and gravity of wort when collected in fermenting back.

Penalty on giving an untrue declaration, &c. 200*l.*

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

barm, or bub, or other matter or thing capable of causing fermentation shall be so added to or mixed with any wort, or allowed to be in any such fermenting back, contrary hereto, then and in each and every such case the distiller shall forfeit the sum of 200*l.*"

Penalty on increase of gravity of wort, 200*l.*

Sect. 55. "That if at any time after any such declaration as aforesaid shall have been delivered, the gravity of any such wort shall be found to exceed the gravity specified in such declaration, or if the quantity of any such wort or wash shall be found to exceed by five per centum the quantity of wort mentioned in such declaration as the quantity collected as aforesaid, then and in each and every such case such distiller shall forfeit the sum of 200*l.*"

Penalty if wort or wash shall be found to exceed in gravity or quantity the gravity or quantity previously ascertained by officer, 200*l.*

Sect. 56. "That if at any time after any officer of Excise shall have taken an account of and ascertained the gravity or quantity of any wort or wash in any fermenting back, any wort shall be found in such back, or any wash in process of fermentation shall be found in such back, which shall exceed in gravity the wort or wash in such back of which such account had been taken, or which shall exceed in quantity, by five per centum or more, the wort or wash in such fermenting back of which such account had been previously taken, all such wort or wash in such back shall be considered as new wort or wash, and not included in any former charge against the distiller in whose possession such wort or wash shall be found; and such distiller shall be charged with duty in respect of the whole wort or wash in such back, in like manner as such distiller is by this act chargeable in respect of any wort or wash not before charged, and the wort or wash of which such account had been previously taken in such back shall be deemed to be distilled or decreased, and the distiller shall be charged for a quantity of spirits in respect of such wort or wash so deemed to be distilled or decreased, in like manner as such distiller is chargeable under this act for any wort or wash actually distilled or decreased; and such distiller shall also, for every such offence, forfeit the sum of 200*l.*"

Regulations for distillers making bub or other composition for exciting fermentation.

Sect. 57. "That every distiller who shall intend to make or prepare the composition called bub, or any other composition for inducing or increasing the fermentation of any wort or wash, shall from time to time, at least six hours previous to the beginning to make or prepare any such composition, give or cause to be given a notice in writing to the proper officer surveying the distillery of such distiller, specifying the time when and the particular vessel or vessels in which such composition is to be made or prepared, and the particular wash, fermenting back or backs into which the same is to be put, and also specifying the quantity of such composition to be put into every such back, which quantity shall not exceed the proportion of five gallons for every 100 gallons of the wort or wash to which such composition is to be so added; and it shall not be lawful for any distiller to have or use at any time any such composition of greater gravity than the gravity of the wort which such distiller shall at such time be authorized to use under the provisions of this act; and if any such composition shall be made or prepared in the distillery of any distiller contrary to the directions hereinbefore prescribed, or if the gravity of any such composition shall be increased at any time after the officer shall have taken an account thereof, or if the whole quantity of such composition shall not, as herein directed, be conveyed into the particular fermenting wash back or backs specified in such notice, within twenty-four hours after the time specified in such notice for making such composition, then and in each and every such case the distiller in whose distillery every such offence or default shall be committed or made shall forfeit the sum of 200*l.*"

Penalty on acting contrary to such regulations, 200*l.*

Distillers shall declare, before beginning to distil, that all wort and wash is collected into fermenting backs, on penalty of 200*l.*

Sect. 58. "That when the whole wort or wash brewed or made in any distillery during any brewing period shall be collected into the fermenting wash backs in such distillery, and before the commencement of any distilling period in the distillery of such distiller, and before any still shall be made use of in such distillery for the distilling of such wort or

wash, a declaration in writing, by or on behalf of such distiller, shall be delivered to the proper officer, that the whole wort and wash in the distillery of such distiller is collected into the fermenting wash backs in such distillery, and thereupon it shall be lawful for the officer surveying such distillery at any time, not being less than twelve hours subsequent to the delivery of such declaration, and such officer is hereby authorized and required to open any still or stills in such distillery, by removing such fastenings as prevent such still or stills from being used; and if any still in the distillery of any distiller shall be made use of before such declaration shall have been delivered as aforesaid, or before the expiration of such twelve hours as aforesaid, or if all the wort and wash in any such distillery shall not then be collected as stated in such declaration, then and in every such case such distiller shall forfeit the sum of 200*l.*"

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Sect. 59. "That eight hours before any wash shall be conveyed from any fermenting wash back in the distillery of any distiller, a notice in writing shall be given to the proper officer, by or on behalf of such distiller, in which shall be stated the number of the back in which such wash is contained, and the day and hour when such wash is to be removed; and such officer shall attend at the time specified in such notice, and after he shall have locked the charging cock or cocks of the wash still or stills, he shall remove all such fastenings as prevent the conveyance of such wash from any back mentioned in such notice into the wash charger, and thereupon forthwith and without delay all the wash which shall be contained in such fermenting wash back, or so much of such wash as such charger shall be capable of containing, shall be conveyed into such charger in manner prescribed in this act; and such officer, after having affixed and secured the fastenings which he had so removed, shall be at liberty and authorized to take an account of the true quantity thereof, and shall thereupon unlock the charging cock or cocks aforesaid; and if any wash shall be removed before such notice shall have been given, or shall be removed or conveyed from any other fermenting back, or at any other time or manner than shall have been mentioned in such notice, or before the proper officer shall have removed or secured respectively such fastenings as before mentioned, and taken account of the true quantity of the wash in such charger, such distiller shall in each and every such case forfeit the sum of 200*l.*"

Distiller to give eight hours' notice before moving wash from fermenting back to wash charger.

Penalty on removal without notice, &c. 200*l.*

Sect. 60. "That it shall and may be lawful for any such officer as aforesaid, and he is hereby authorized and empowered to take and convey away out of such distillery, from any wash back or charger in the distillery of any distiller, a sample not exceeding the quantity of twenty gallons of the wash contained in any such back or charger, and to cause such sample of wash to be distilled into low wines in any still provided for that purpose by the commissioners of Excise; and such officer shall gauge or measure the quantity and ascertain the strength of the low wines produced by the distillation of such wash."

Officer may distil sample of wash.

Sect. 61. "That it shall be lawful for any officer of the rank of supervisor of Excise at any time to require that any low wines receiver in the distillery of any distiller shall be emptied and cleaned out, and that any quantity of wash shall be conveyed into any wash still in the distillery of such distiller, and from any wash back as such officer shall direct or require, in order that such wash may be forthwith distilled into low wines; and all persons in the employ of such distiller shall, on reasonable notice, give and provide aid and assistance and fuel to such officer at his request in distilling such wash into low wines, and in conveying the whole of such low wines directly into such low wines receiver which shall be so cleaned out, and such low wines shall be kept in such receiver, unmixed with any matter or thing whatsoever, until such officer shall have taken an account of the quantity and strength of such low wines; and if such low wines receiver shall not be emptied and cleaned out, or if such wash shall not be conveyed into such wash still, or from

Distiller shall clean out low wines receiver, and assist officer in distilling a charge of wash out of any wash back required by officer.

Penalty on default, 200*l.*

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

such wash back, as shall be required by such officer, or if such aid and assistance and fuel shall not be given to such officer in the distilling such wash into low wines, or in conveying the whole of such low wines into such receiver, or if such low wines shall not be kept in such receiver, unmixed as aforesaid, until such officer shall have taken such account as aforesaid, then and in every such case every such distiller shall for each default or offence forfeit the sum of 200*l.*"

Penalty if produce of wash distilled exceeds the proportion of one gallon and a quarter of proof spirits for every five degrees of gravity attenuated, 200*l.* &c.

Sect. 62. "That in every such case, whether such low wines shall have been produced from wash distilled in any wash still in such distillery, and conveyed into any low wines receiver in such distillery as aforesaid, or shall have been produced from any sample of wash taken by such officer as aforesaid, and distilled in any still provided by the commissioners of Excise as aforesaid, such officer shall ascertain the quantity of proof spirit in and equivalent to such low wines, according to the strength of such low wines; and if such quantity of proof spirits so computed shall, in any of the respective cases aforesaid, exceed the rate or proportion of one gallon and one quarter of a gallon of proof spirits from each and every one hundred gallons of such wort or wash, for and in respect of every five degrees of the gravity of such wort or wash which shall have been attenuated, as taken by the surveying officer; that is to say, for every five degrees of difference between the highest gravity of the wort from which such wash was produced, as declared by such distiller pursuant to this act, or as appearing on any account thereof taken by the officer, and the lowest decreased gravity of such wort or wash, as taken by the officer previous to the distillation thereof as aforesaid, then and in each and every such case respectively every such distiller shall forfeit the sum of 200*l.*; and also the sum of 6*d.* for every gallon of wort or wash contained in the wash back from which such wash so distilled was removed or taken: Provided always, that such officer shall pay to such distiller the value of every sample of wash which he shall so take away from such distillery, or return the produce thereof, and mix the low wines with the low wines of the wash back to which they belong; provided also, that such distiller, or any person acting in his behalf, shall and may be present at the distillation of any such wash, if such distiller or other person shall desire to be so present."

Penalty on removing wash till the whole contents of one back shall be conveyed to still, 200*l.*

Sect. 63. "That after any wash shall have been removed from any fermenting back in any distillery, it shall not be lawful to remove any wash from any other fermenting back in such distillery, until the whole contents of such first-mentioned back shall have been taken a separate account of by the proper officer in the wash charger, and conveyed into the wash still or stills; and if any wash shall be removed contrary hereto, the distiller on whose distillery such offence shall be committed shall forfeit the sum of 200*l.*"

Notices to be given for removing low wines, feints, or spirits from receivers.

Sect. 64. "That four hours at least before any low wines, or feints, or spirits respectively shall be removed out of any of the respective receivers of low wines, or feints, or spirits in the distillery of any distiller, a notice in writing, specifying the day and hour when such low wines, or feints, or spirits respectively are to be removed out of such receivers respectively, shall be given to the proper officer, by or in behalf of any such distiller; and such officer shall attend at the time specified in such notice, and after having taken an account of the quantity and strength of such low wines, or feints, or spirits respectively, as the case may be, such officer shall remove the fastenings of the pumps or other conveyances used for the removal or conveyance of low wines, or feints, or spirits, and of the receivers containing such low wines, or feints, or spirits respectively, and forthwith and without delay all the low wines or feints which shall be in such low wines or feints receiver or receivers respectively shall be removed and conveyed into the low wines or feints charger or chargers; and all the spirits which shall be contained in such spirit receiver shall be removed and conveyed into the entered spirit

storehouse of such distiller; and if any low wines, or feints, or spirits respectively shall not be removed and conveyed as aforesaid, or shall be removed from any such receiver without such notice, or at any other time than shall have been specified in such notice, or before the officer shall have removed the several fastenings, as herein directed, or if, after such officer shall have taken an account of the quantity and strength of the low wines or feints or spirits respectively in any such receiver, any other low wines, or feints, or spirits shall be conveyed into any such receiver, until the whole of the low wines, or feints, or spirits of which such account shall have been taken shall have been removed or conveyed from any such receiver, and the fastenings thereof shall have been again secured by such officer, then in each and every such case the distiller in whose distillery such offence shall be committed shall forfeit the sum of 200*l.*"

(15). *Spirituous liquors.*

6 Geo. 4, c. 80. Penalty for removing spirits without notice, &c. 200*l.*

Sect. 65. "That all the low wines produced by the distillation of the wash contained in each fermenting back in the distillery of any distiller shall be collected and kept in the low wines receiver or receivers separate and apart from and unmixed with any low wines produced by the distillation of any wash contained in any other fermenting back, or with any other matter or thing whatever, until an account of the quantity and strength of such low wines so separately collected shall have been taken by the proper officer; and upon such account having been taken, all such low wines shall be removed from such receiver or receivers into the low wines or feints charger or chargers, before any other low wines shall be made or produced from any subsequent distillation of wash in such distillery; and all the spirits and feints produced by the redistillation of such low wines, of which such account shall have been taken, shall in like manner be collected in the spirits and feints receiver or receivers respectively, and kept therein separate and apart from and unmixed with any other matter or thing (save as is hereinafter provided) until an account of the quantity and strength of such spirits and feints respectively shall have been taken by the proper officer; and if the whole quantity of low wines which shall be produced by the distillation of all the wash contained in each fermenting back in the distillery of any such distiller shall not be collected in the low wines receiver or receivers, separate and apart and unmixed as aforesaid, or if all such low wines so collected shall not remain and be kept in such receiver or receivers, until an account of the quantity and strength of such low wines shall have been taken therein by the proper officer, or if all such low wines shall not be removed from the receiver or receivers, as herein directed, or if all the spirits and feints respectively produced by the redistillation of such low wines, of which such account shall have been taken, shall not be so collected and kept separate as aforesaid (except as herein provided) until an account of the strength and quantity of such spirits and feints respectively shall have been taken by such officer as aforesaid, then and in every such case every such distiller shall forfeit the sum of 200*l.*: Provided always, that it shall and may be lawful to mix with any such feints so collected in such receiver or receivers, or with the low wines from which such feints are produced, any feints (if any) which shall have been produced by and which may remain on hand after the redistillation of the last charge of the low wines still with the feints produced from the low wines of the preceding back of wash; provided also, that nothing herein contained shall extend to prevent any distiller in whose distillery any feints shall have been collected, and an account thereof taken as aforesaid, from redistilling, under the provisions of this act, the whole of such feints, and in like manner to redistil the whole of any feints produced by such redistillation; and also, in like manner, to repeat the process of redistilling the whole of any feints produced by any such redistillation so often as it shall appear expedient to such distiller so to do; provided nevertheless, that it shall and may be lawful for any officer of Excise, and such officer is hereby

Low wines, spirits, and feints produced from wash in each back to be kept separate until account taken, on penalty of 200*l.*

May redistil feints.

Officer to take an account of spirits

(15). *Spirituous liquors.*

6 Geo. 4, c. 80 and feints produced on redistillation.

authorized to take an account of the spirits and feints respectively produced and collected as aforesaid on each and every such redistillation as aforesaid, and to compute and ascertain the quantity of proof spirits in and equivalent to such spirits and feints respectively, according to the strength of such spirits and feints respectively; and such distiller shall be chargeable and charged with duty, under the provisions of this act, for the greatest quantity of proof spirits which shall appear to have been produced or deemed to have been produced under the provisions of this act, from the whole of the low wines which shall have been collected and taken an account of, as before-mentioned, whether such greater quantity of proof spirits shall appear from the first redistillation of such low wines, or from any such subsequent redistillation as aforesaid."

Modes of charging duty: 1st. By percentage from wash, according to attenuation of gravity, one gallon for every five degrees attenuated.

Sect. 66. "That for and in respect of every 100 gallons of wort or wash which shall be brewed or made in the distillery of any distiller, the officer of Excise shall charge such distiller with duty for a quantity of spirits at the rate of one gallon of proof spirits for every five degrees of gravity of such wort or wash which shall be attenuated (*a*); that is to say, for every five degrees of difference between the highest gravity of such wort or wash, as declared by such distiller pursuant to this act, or as appearing on any account taken thereof by the officer in any fermenting back or backs, and the lowest decreased gravity of such wort or wash, as appearing on any account thereof taken by the officer previous to the distillation of such wort or wash; and the officer shall also charge at the same rate and proportion of spirits for any lesser quantity of such wort or wash, and for any less decrease of gravity than five degrees."

2nd. By the produce as found in the low wines.

Sect. 67. "That when any officer of Excise shall take an account of the quantity and strength of the low wines which shall have been produced from the distillation of the wash contained in any fermenting back in the distillery of any distiller, such officer shall compute and ascertain the quantity of proof spirits in and equivalent to such low wines, according to the strength and quantity of such low wines; and such quantity of proof spirits shall be deemed and taken to have been distilled or produced from the wash contained in such back, and duty shall be payable, and the officer shall charge the distiller with duty, on the quantity of proof spirits so ascertained, after making an allowance of two per centum on such quantity."

(*a*) The duty on spirits attaches upon the *wash* after it has been gauged, and before distillation, by 26 Geo. III. c. 73, s. 1; and the distiller is therefore liable to pay the duty, although the still burst, and the wash was lost before it was made into spirits: and *per Macdonald, C. B.*: "I believe it is a very general rule now adopted, on making these revenue acts, to avoid providing for contingencies of this kind, which would open a great door to fraud; and where a real misfortune happens, by a proper application to the Treasury, from the liberal manner in which these matters are conducted, a party is sure of relief." (*The Attorney General* v. ——, 2 *Anstr.* 558). In the same case, the counsel for the defendant admitted that the tax on malt cannot be taken back, although it is afterwards consumed by accident before being used in brewing or distillation. An act of Parliament was passed to relieve Messrs. Meux & Co. from a loss to the extent of the duty on an immense quantity of beer lost by the bursting of a vat.

In another case it was held, that after the duties of Excise are charged on wash made for extracting spirits, by 26 Geo. III. c. 73, if any part of the wash is lost by accident, the manufacturer cannot be relieved from the respective proportion of the duty as for an overcharge, under the 1 W. & M., which only authorizes relief against a charge which was excessive at the time it was made, and does not extend to protect the distiller from an accident which happens to the article after the duty had been regularly assessed upon it. (*Rex* v. *Sikes*, 7 *T. R.* 56).

In the case of malt there was an express provision declaring that a return of duty shall be demandable in case of destruction of the commodity. See 9 Geo. I. c. 3, ss. 35, 36, 37. (*Ex parte Calvert*, 1 *Anstr.* 270).

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

3rd. By the produce on redistillation of low wines into spirits and feints

Sect. 68. "That whenever any officer of Excise shall take an account of the quantity and strength of spirits and feints respectively which shall have been produced from the whole of the low wines distilled from the wash contained in any fermenting back, together with any feints which may have remained from any previous redistillation in the distillery of any distiller, such officer shall compute and ascertain the quantity of proof spirits in and equivalent to such spirits and feints respectively according to the strength of such spirits and feints respectively, and shall deduct from the quantity of proof spirits so ascertained a quantity of proof spirits, computed and ascertained as aforesaid, equivalent to the quantity of feints (if any) which may have remained on hand after any such previous redistillation, and which may have been included in the account of spirits and feints so taken as aforesaid; and after such deduction the remaining quantity of proof spirits so computed and ascertained shall be deemed and taken to have been distilled and produced from the low wines distilled from the wash contained in such fermenting back, and duty shall be payable, and the officer shall charge the distiller with duty, upon such last-mentioned quantity of proof spirits."

Wash to be charged from highest gauge, without allowing for waste or dregs.

Sect. 69. "That every distiller shall, in respect of all wort, wash, and bub in the distillery of such distiller, be chargeable and charged according to the highest gauge of quantity which shall at any time be taken thereof, and according to the highest amount of gravity thereof at any time declared by such distiller or ascertained by any officer of Excise, without any allowance for waste, bub, dregs, yeast, or other matter whatever; and when any decrease shall take place in the quantity of wort, wash, and bub in the distillery of any distiller, the amount of such decrease shall be deemed and taken to have been distilled by such distiller, and such distiller shall be chargeable and charged with a quantity of spirits in proportion to the decrease of any such wort, wash, and bub, according to the directions of this act."

Distiller shall not mix sugar or other material with spirits, &c. to prevent the strength being ascertained.

Sect. 70. "That it shall not be lawful to mix with or add to any low wines, feints, or spirits in the distillery of any distiller any sugar, syrup, or any glutinous or saccharine or other matter or thing, whereby the gravity of such low wines, feints, or spirits shall be increased, or so as to prevent the strength thereof respectively being ascertained by the hydrometer; and if it shall at any time be found that any sugar, syrup, or other glutinous or saccharine or other matter shall be so mixed with or added to any low wines, feints, or spirits in the distillery of any such distiller, contrary hereto, such distiller shall forfeit for every such offence the sum of 200*l.*; and all low wines, feints, and spirits so mixed respectively, together with all such mixtures, shall be forfeited, and may be seized by any officer of Excise."

Penalty, 200*l.* &c.

If the produce of spirits from wash shall exceed the proportions herein mentioned as to the gravity of wort, &c. duty shall be charged accordingly.

Sect. 71. "That whenever the quantity of spirits which shall be actually distilled or produced, or which, under any of the provisions of this act, shall be deemed to be distilled or produced from any wort or wash contained in any fermenting back, shall exceed the rate or proportion of one gallon and one-fifth part of a gallon, of proof spirits from each and every 100 gallons of such wort or wash, for and in respect of every five degrees of gravity of such wort or wash which shall have been attenuated, as taken by the officer; that is to say, for every five degrees of difference between the highest gravity of the wort from which such wash was produced, as declared by such distiller, pursuant to this act, or as appearing on any account taken thereof by the officer, and the lowest decreased gravity of such wort or wash, as taken by the officer previous to the distillation thereof, then and in every such case the officer shall keep a distinct account of every such excess quantity, and shall set forth the same in his book or books, and in his return or charge against such distiller under the head of 'undue excesses;' and in case the quantity of spirits charged upon any distiller during the continuance of the licence of such distiller, exclusive of such undue excesses as afore-

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

said, shall be less in respect of every 100 gallons of wort or wash distilled or decreased in the distillery of such distiller, than after the rate or in the proportion of one gallon of proof spirits for every five degrees of the gravity of the wort when made from malt, or corn or grain, or any mixture thereof, or from potatoes, or any mixture thereof, or than after the rate or proportion of one gallon of proof spirits for every four degrees of the gravity of the wort when made from sugar, or any mixture thereof, which shall have been specified in any notice which shall have been delivered by any such distiller pursuant to this act, then and in every such case such distiller shall be chargeable with the quantity of spirits after the proportion aforesaid respectively which shall appear so deficient, and the officer shall, within one month after the expiration of such licence, make a return, and shall charge such distiller with duty on the quantity of spirits which shall appear so deficient, and such distiller shall pay such duty within ten days next after such return shall be made, or ought to have been made, or shall for default forfeit 20*l.*, together with a sum equal to double the amount of such duty."

Officer shall make return on distiller for quantity of spirits chargeable, who shall pay duty accordingly, on penalty of 20*l.* with double the duty.

Sect. 72. "That the proper officer of Excise shall, from time to time, make out and deliver to the collector of Excise, or to such person or persons as the commissioners of Excise shall appoint to receive the same, a return of the quantity of spirits for which such distiller shall, from time to time, be chargeable with duty, and of the duty payable thereon under this act; and any such officer shall and may make out and deliver any such return or account from time to time, and at any time, and for any period, as shall be directed by the commissioners of Excise; and every such officer is hereby required in every such return to charge such distiller, and such officer shall charge such distiller, according to such of the several modes of charging prescribed by this act as shall produce the highest amount of duty; and such officer shall, if required in writing by such distiller, deliver or leave with every such distiller, or at such distillery, an account in writing, signed with his name, setting forth the quantity of spirits specified in such return, with the amount of duty thereon, and the period comprised in such return; and the return of such officer shall be a charge on every such distiller, and such distiller shall pay the duty appearing by such return, or which shall be chargeable upon and have become due and payable from such distiller, within such time and times, and in such manner, as shall from time to time be directed by the commissioners of Excise for that purpose, or shall for every default forfeit 20*l.*, together with a sum equal to double the amount of such duty."

Distiller, &c. to make entry at the end of every distilling period, by declaring true quantity of wash distilled and spirits made in each brewing and distilling period, and once a quarter the quantity of malt used, on penalty of 200*l.*

Sect. 73. "That at the end of every distilling period every distiller shall, under the proper hand of such distiller, or under the hand of one of such distillers, if more than one in partnership, make a true and particular entry or return in writing to the proper supervisor of the district of the whole quantity of the wort or wash which shall have been decreased from the wash backs, or distilled in the distillery of such distiller into low wines or spirits, and of the whole quantity of spirits, computed at the strength of proof spirits, which shall have been made or distilled in the distillery of such distiller within the preceding brewing and distilling period, and of the whole quantity of feints remaining undistilled; and shall at the end of every quarter of a year, if demanded by the commissioners of Excise, make a return, in such manner as aforesaid, to the commissioners of Excise, of the whole quantity of malt used by such distiller in the preceding quarter; and in case of omission, neglect, or default in the making of such respective entry or return, or if any false entry or return shall be made, every such distiller shall, for every such omission, neglect, or default, and for any such false entry, forfeit the sum of 200*l.*"

Distiller not to travel for making such returns, &c. except to next market-town.

Sect. 74. "Provided always, that no distiller shall be compelled to travel for the making of the said entries or returns, or for the payment of the said duties, or for any other cause relating to or concerning the

same, to any other place than to the market-town of or nearest to the entered distillery of such distiller."

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

No spirit shall be received into distiller's stock, except such as shall be distilled in his distillery, on penalty of 200*l.* and forfeiture of spirits.

Sect. 75. "That no spirits whatever shall be received or conveyed into or kept in the stock of any distiller, other than such spirits only as shall have been distilled in the distillery of such distiller, and as shall have been conveyed thereto, according to the directions of this act from the spirits receiver in such distillery; and if any spirits other than such only as shall have been distilled by and in the distillery of such distiller shall be received or conveyed into, or shall be kept, or shall at any time be found in the stock of such distiller contrary to this act, such distiller shall forfeit the sum of two hundred pounds; and all such spirits shall be forfeited, and shall and may be seized by any officer of Excise."

Scales, weights, and a gallon measure, to be kept by distillers and rectifiers or compounders of and dealers in spirits, and officers permitted to use them, &c.

Sect. 76. "That all and every distiller, rectifier, or compounder of and dealer in spirits shall and is and are hereby required to keep sufficient and just scales and weights, and a one gallon measure, in his, her, or their entered warehouses, storehouses, and premises, and in every warehouse for warehousing spirits for exportation under the provisions of this act, and also to maintain the same conveniently placed and ready for use; and shall permit and suffer any officer or officers of Excise to use the same for the purpose of weighing, measuring, and taking an account of the spirits and casks, and other vessels and packages used or fit for conveying and removing spirits, which shall at any time be in the possession of such distiller, rectifier, or compounder or dealer; and if any such distiller, rectifier, or compounder or dealer shall not keep and maintain such scales and weights and measure, or either of them, or shall not permit or suffer any officer or officers of Excise to use the same as aforesaid; or if any such distiller, rectifier, or compounder or dealer shall, in the weighing or measuring of any such spirits, casks, vessels, or other packages, use or cause or procure or suffer to be used, any false, unjust, or insufficient scales or weights or measures, or shall practise any art, device, or contrivance, by which any such officer or officers may be hindered or prevented from taking the just and true weight and measure of any such spirits, casks, vessels, or other packages, then and in every such case such distiller, rectifier, or compounder or dealer shall, for each and every such offence, forfeit the sum of one hundred pounds; and all such false, unjust, or insufficient scales and weights and measures respectively shall likewise be forfeited and lost, and shall and may be seized by any officer or officers of Excise."

Penalty, 100*l.*

Assistance to be given the officer in taking account.

Sect. 77. "That all and every such distiller, rectifier, or compounder of, or dealer in or retailer of spirits shall, when and so often as he, she, or they shall be thereunto required by any officer or officers of Excise, and with a sufficient number of his, her, or their servants, aid and assist to the utmost of his, her, or their power such officer or officers in weighing, measuring, and taking an account of all spirits and casks, vessels, and other packages, for keeping, conveying, or removing spirits in the possession of him, her, or them, on pain of forfeiting for every neglect or refusal thereof the sum of fifty pounds."

Penalty, 50*l.*

Officer may take samples of wort, wash, spirits, &c. in any distillery.

Sect. 78. "That it shall and may be lawful for any officer of Excise, from time to time, and whenever and as often as such officer shall deem expedient so to do, to take any sample or samples of any wort, wash, low wines, feints, and spirits respectively, in any back, receiver, charger, or other vessel or utensil in the distillery of any distiller, in order that such officer may ascertain the gravity or strength of such worts, wash, low wines, feints, and spirits respectively, and from such part of any such back, receiver, charger, or other vessel or utensil as the officer shall think proper; and the gravity or strength of any such sample so taken shall be and be held to be the true and correct gravity or strength of the whole contents of the back, receiver, charger, or other vessel or utensil from which any such sample shall be so taken: Provided always, that before any such sample shall be so taken, all the liquor

Such samples deemed true samples.

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

contained in any such back, receiver, charger, or other vessel or utensil may be stirred and mixed up and mixed together by such distiller, or any person in the employ of such distiller, if they shall think fit so to do."

Distiller's stock, account of proof spirits to be kept by officer.

Sect. 79. "That the proper officer of Excise shall, as often and at such time and times as he shall think fit, take and shall keep an account, by way of debtor and creditor, of the stock of spirits in the distillery of every distiller, and shall, in such account, credit such stock with the full quantity of spirits, computed at hydrometer proof, which shall be, from time to time, duly conveyed, pursuant to this act, into such stock, from the spirit receiver in such distillery, and shall debit such stock with the full quantity of spirits, computed at hydrometer proof, which shall be from time to time sent out of such stock under legal permit; and if at any time the quantity of such spirits which shall be found in the stock or possession of any such distiller shall be greater than the quantity of spirits which by the stock account, so kept by such officer, ought to be in the stock or possession of such distiller, all such excess quantity of spirits shall be forfeited, and may be seized by any officer of Excise, and every such distiller shall forfeit the sum of 20*s.* for each and every gallon of such excess quantity of spirits; and if at any time the quantity of spirits in the stock or possession of any distiller shall be less than the quantity of spirits which by the stock account, kept by such officer, ought to be in the stock or possession of such distiller, every such distiller shall forfeit the sum of 20*s.* for every gallon of spirits which shall be so deficient: Provided always, that no distiller shall be liable to such last-mentioned penalty in any case where such decrease shall not exceed two gallons of proof spirits per centum on the quantity of spirits formed by the balance left on the last stocking, and the quantity since duly brought into stock from the spirit receiver, if such last stocking be no further distant than seven days, or three gallons of proof spirits per centum as aforesaid if more than seven days, and such distiller shall prove, to the satisfaction of the supervisor, that such decrease did not result from any fraud practised or intended."

Penalty for increase or decrease in stock, forfeiture of spirits, and 20*s.* for every gallon of excess.

Limitations as to excess.

Licences, entries, notices, declarations, &c. may be in such form as commissioners shall direct.

Sect. 80. "That the several licences, entries, notices, declarations, books, accounts, and returns required or directed by this act shall and and may be in such respective form or forms as the commissioners of Excise may from time to time direct; and it shall not be necessary to prove, on the trial of any complaint or information, or on any other proceeding for any offence against this act, the particular order or direction of the said commissioners of the Treasury, or commissioners of Excise, in that behalf."

No spirits to be removed from distillery in less quantity than eighty gallons, nor without permit expressing strength thereof, on penalty of 200*l.* &c.

Sect. 81. "That no spirits shall be sent out of or removed from the distillery or stock of any distiller at any other strength than twenty-five per centum or eleven per centum above or ten per centum below hydrometer proof, or in any less quantity than in a cask containing eighty gallons, nor without a lawful permit, expressing the true quantity and strength of such spirits; and if any spirits shall be sent out of or removed from the distillery or stock of any such distiller in any less quantity than in a cask containing eighty gallons, or without such permit as aforesaid, or being of any greater strength than the strength expressed in such permit, then, and in every such case, all such spirits, and every cask and vessel containing the same, shall be forfeited, and shall and may be seized by any officer of Excise, and such distiller shall, for every such offence, forfeit the sum of 200*l.*"

Distillers may, under directions of this act, warehouse spirits without payment of duty, for exportation, or for removal to Scotland or Ireland (*a*).

Sect. 82. "That it shall and may be lawful for every distiller in England to warehouse, for exportation only, or for removal to Scotland or Ireland, any spirits distilled in the distillery of such distiller, without

(*a*) Sections 82 to 100 relate to spirits made in England for *exportation*, or to be shipped as stores; but it is thought best here to print the whole act continuously.

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

payment of the duty of Excise thereon, according to the provisions of this act, and under and subject to such further rules and regulations as the commissioners of Excise shall from time to time direct or order, every such warehouse to be provided and duly entered by such distiller, and to be ceiled and constructed and secured in such manner as shall be approved of by the commissioners of Excise or supervisor of the district; and every such warehouse shall have only one door, which door shall open into a public street or road, and have three locks, one of which shall be provided by such distiller, and the key of it kept by such distiller, and the other two of such locks shall be provided by the commissioners of Excise, at the expense of such distiller, the key of one of such locks being kept by the supervisor of the district, or other officer directed by the commissioners of Excise, and the key of the other of such two locks being kept by the surveying officer of such warehouse: Provided always, that it shall not be lawful so to warehouse any spirits of any strength other than the respective strengths of twenty-five per centum above proof, or eleven per centum above proof, as denoted by the hydrometer called Sykes's hydrometer; and that all such spirits shall be contained in iron-bound casks of not less than eighty gallons content each; and that there shall be marked on each end of every cask, in letters or figures legibly cut, branded, or painted thereon, the mark or number of every such cask, the full content thereof in gallons, and the number of gallons and strength of the spirits contained therein, every such cask being full at the time of the sending of such spirits out of the distillery, for the removal thereof to such warehouse; and if any distiller or distillers warehousing spirits as aforesaid shall neglect or refuse to provide and keep any such warehouse well and sufficiently constructed and secured as aforesaid, or to provide and keep such locks and keys, or to pay the supervisor for such two locks and keys as aforesaid, for securing such spirits as aforesaid, or to enter such warehouse for that purpose at the proper office of Excise, or shall make use of any warehouse or other place for keeping spirits without being constructed and well and sufficiently secured as aforesaid, or before the same shall have been first duly entered and approved of, according to the directions of this act; or shall remove any spirits to be so warehoused, except in such full iron-bound casks, marked and numbered, and having cut, branded, or painted thereon such particulars as aforesaid; or shall put into or keep in such warehouse any other liquors or other spirits other than as provided by this act; or if any such distiller or distillers, or any other person or persons whatsoever by his, her, or their order, privity, connivance, or direction, after any such spirits shall have been removed to and secured in any warehouse for keeping such spirits for exportation, shall open any of the locks or doors in the absence of the proper surveyor or supervisor and officer of Excise; or shall make or obtain any way or kind of entrance, or access, into any such warehouse, or shall remove any part whatever of the partition between any warehouse or warehouses for keeping spirits, and any other place or places whatsoever next thereunto adjoining; or shall, after any such warehouse shall have been so approved of as aforesaid, make any addition to or in any way alter the same without notice first given to the proper supervisor of Excise, of such intended addition to or alteration in such warehouse, and his consent in writing first had and obtained for the same; or shall remove any of the said spirits from any locked warehouse to any other warehouse, or to be put on shipboard and exported or otherwise removed, except as provided by this act; or shall by any art, contrivance, or device whatsoever privately remove, convey away, or conceal, or cause, procure, or suffer to be privately removed, conveyed away, or concealed, any of the spirits, either before the same are put into the warehouse or warehouses, or afterwards, then and in each and in every such case such distiller and other person and persons for every such offence shall forfeit and lose the sum of 500*l.*; and all such spirits deposited, removed, or concealed con-

Strength of the spirits warehoused to be either 25 or 11 per cent. over proof.

The quantity and strength of the spirits to be marked on cask.

If distiller opens any of the locks in absence of officer;

or make any way into such warehouse;

or alter the condition thereof, without giving notice to surveyor, and his consent be first had;

or shall privately remove any of the spirits, he shall forfeit 500*l.* &c.

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trary to the provision of this act shall be forfeited, and shall and may be seized by any officer or officers of Excise."

6 Geo. 4, c. 80.

Distiller to give notice of his intention to warehouse spirits; and none shall be removed into warehouse without permit.

Sect. 83. "That when and as often as any such distiller shall intend to warehouse spirits for exportation or removal as aforesaid, he shall give two days' notice in writing to the officer or officers of Excise surveying the distillery of such distiller, and also to the proper officer of Excise surveying such warehouse, of such his intention: in which notice shall be set forth the mark, number, and full content in gallons of each cask, and the number of gallons and strength of spirits contained therein, which such distiller intends to warehouse, and the day and hour of the day on which such distiller intends to commence the removal of such spirits out of the stock of such distiller to such warehouse: Provided always, that no such removal of any spirits shall be allowed without a permit being first granted to accompany the same according to law; and no such removal shall take place except upon the day mentioned in such notice as aforesaid, nor upon any Excise-office holiday; nor shall such removal be commenced at any time of the day before the hour of nine in the forenoon, or continued after the hour of two in the afternoon."

Officers to attend removal of spirits, and take stock of distillers.

Sect. 84. "That the officer of Excise to whom any such notice shall have been given shall attend at the spirit stock of every such distiller at the time mentioned as aforesaid in such notice, and such officer shall ascertain the quantities and strengths of all such spirits as shall be in the possession or stock of such distiller in such manner as shall be directed by the commissioners of Excise, and of the spirits proposed or intended to be sent out of such stock, and shall compare the marks and numbers, and the several particulars cut, branded, or painted, as aforesaid, on the several casks in which such spirits shall be contained, with the marks and numbers and particulars described and set forth in the notice for the warehousing of such spirits; and every such officer shall or may continue in the place where such stock is kept until the whole of the spirits of which such notice shall be given shall be removed out of the stock of such distiller, under permit as aforesaid; and immediately after the removal of such spirits, such officer shall take stock on such distiller in such manner as shall be directed by the commissioners of Excise, and set forth in the stock book the alteration in such stock found after the removal of such spirits."

Officer at warehouse shall take account and give receipts for spirits warehoused, and take samples.

Sect. 85. "That immediately on the arrival of such spirits under permit as aforesaid at the warehouse, the proper officer surveying such warehouse shall take an account of the contents of every cask, by gauge, or weight and temperature, as he may think fit, or as may be ordered by the commissioners of Excise, and the strength of the spirits contained therein, and shall enter an account thereof, with the mark and number of each such cask, in a book to be by him kept for that purpose, and shall also take a sample of half a pint of such spirits, drawn from every such cask, and keep the same labelled, with all such particulars as aforesaid, until three months after the whole of such spirits as shall be delivered from such warehouse for exportation shall be exported, and shall then deliver the same to such distiller; and such officer shall, after taking such account as aforesaid, deliver to the distiller or person requiring the same, for the use of such distiller, a certificate specifying the mark and number of each of the several casks, with the several particulars so found by him as aforesaid, with the day of the month and year when such spirits were warehoused as aforesaid."

Such receipt shall be delivered by distiller to officer, who shall give credit for same in the charge against distiller.

Sect. 86. "That such certificate shall be forthwith delivered over by every such distiller to the officer surveying the distillery of such distiller, and upon the delivery of such certificate it shall be lawful for such officer to deduct from the number of gallons of proof spirits for which such distiller shall then be charged or chargeable with duty for the next ensuing payment the number of gallons computed at proof so warehoused, and to return the charge of duty so payable as aforesaid,

against the distiller to the commissioners or collector of Excise, for the remaining number of gallons, which shall be a charge against such distiller accordingly; and every such officer shall annex to such return such certificate as aforesaid, as his voucher for having made such deduction as aforesaid."

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Sect. 87. "That it shall be lawful for the distiller or proprietor of any such spirits so lodged in any warehouse as aforesaid, in the presence of the proper officer, who is hereby required when requested to attend at all reasonable times for that purpose (but not oftener than once in twenty-four hours), to view, examine, and show for sale such spirits, or any part thereof, and to examine the state of the casks, and to prevent leakage or drainage therefrom."

Distiller may view and show spirits in warehouses.

Sect. 88. "That it shall and may be lawful for any distiller or other proprietor of spirits warehoused as aforesaid, under the provisions of this act, to cause any cask or casks of spirits belonging to such distiller or proprietor, and which such distiller or proprietor shall require to be delivered out for exportation or removal, pursuant to the provisions of this act, to be filled up if necessary (in the presence of the surveying officer, or such other person as the commissioners of Excise shall appoint) from or out of any other cask or casks of spirits belonging to such distiller or proprietor, and which shall then be in such warehouse; and in case any part of the contents of any such cask shall remain after the filling up of any other cask or casks, the said cask, part of whose contents shall have been so used in filling, shall be kept apart for the like purpose, or if reduced below twenty gallons shall be delivered into the dealer's stock of any such distiller, or his on her payment of duty on such residue."

Ullage casks may be filled up in warehouse.

Sect. 89. "That in case the quantity of any spirits computed at proof which shall have been or shall be lodged in any warehouse as aforesaid shall at any time or by any means fall short or be deficient of the actual quantity so computed which was so warehoused, after allowing for so much and such part of such spirits so computed as shall have been duly exported or removed, the distiller or proprietor of such spirits shall be subject and liable to pay the full duties for home consumption upon such spirits for and in respect of the quantity so found deficient as aforesaid, and shall pay and satisfy the same upon demand, before any other of the spirits so warehoused then remaining shall be permitted to be taken out of such warehouse; and all such spirits so remaining shall be subject to the duties on the quantity so deficient, and shall and may be sold by the commissioners of Excise for exportation, for payment of the same and of other charges, paying over the surplus, if any, to the person who warehoused such spirits, or his assigns."

Distiller liable to duty on deficiency of spirits in warehouse.

Sect. 90. "That spirits so warehoused may be removed at the desire of the distiller or proprietor thereof, and at his sole risk, as well of the value thereof as of the duties thereon, from the warehouse, at any one place in the United Kingdom, to the like warehouse at any other place in the United Kingdom, for the purpose of exportation only to foreign parts, under such security and regulations as the commissioners of Excise shall from time to time order in respect thereof, and upon payment of the duty on all deficiencies found before such spirits are removed."

Warehoused spirits may be removed from one warehouse to another for exportation to foreign parts only.

Sect. 91. "That it shall and may be lawful to remove, subject to the provisions of this act, from England to Scotland or Ireland, spirits distilled in England, or to remove, subject as aforesaid, from Scotland or Ireland respectively to England, spirits distilled in Scotland or Ireland respectively, any thing in any other act or acts to the contrary thereof in anywise notwithstanding; and all such spirits so removed shall, on arrival in England, Scotland, or Ireland respectively, be dealt with in all respects as if the same had been distilled and made in the country into which the same are so removed; and the person or persons to whom the same shall be sent for sale shall have the same privileges and be subject to the like licence, regulations, and penalties in respect of such

Spirits distilled in England may be sent to Scotland or Ireland, and spirits distilled in Scotland or Ireland to England; and upon arrival, such spirits shall be dealt with as spirits of that country.

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Spirits sent from England to Scotland or Ireland, or from Scotland or Ireland to England, to be taken from warehouse.

spirits, as dealers in spirits in the country into which such spirits shall be imported or brought, and as if such spirits had been distilled within the same."

Sect. 92. "That no spirits, whether medicated or mixed with any other ingredient or ingredients or not, which shall be made or distilled in England, Scotland, or Ireland respectively, shall be removed or sent from either Scotland or Ireland into England, or from England into Scotland or Ireland, except such spirits only as shall, for the purpose of such removal, be taken from and out of a warehouse in which the same shall be then warehoused, without payment of duty; and that before any such spirits shall be delivered out of such warehouse for that purpose, the proprietor or proprietors or person or persons who shall propose or intend to take out and ship such spirits for such removal as aforesaid shall give two days' notice in writing to the surveying officer of Excise of such warehouse in England, Scotland, or Ireland respectively, of the time when he, she, or they shall propose or intend to take out such spirits from such warehouse, and shall specify in every such notice the number of casks intended to be so removed, and also the mark and number of each cask, the full content thereof in gallons, and the strength and quantity of the spirits contained therein, and the total quantity of spirits to be so removed, the name of the vessel and of the master thereof, or of the carriage or conveyance, by which such spirits are to be so removed, the name of the port or place at which such spirits are to be shipped, and of the port or place to which such spirits are to be removed, and of the person or persons at such last-mentioned port or place to whom the same are to be sent; and every such officer shall, upon the receipt of such notice, be authorized to examine every such cask, and ascertain the truth of the several particulars aforesaid, and the temperature and strength of such spirits, and the quantity of spirits contained in each of such casks, either by gauge or by taking the weight thereof, and shall, after receipt of the certificate of payment of duty, hereinafter mentioned, when such spirits are intended to be so removed for consumption, and upon and according to the request in writing of such proprietor or proprietors, person or persons as aforesaid, specifying the several particulars aforesaid, grant a permit for the removal of such spirits as aforesaid, expressing in or by endorsement of such permit the several particulars as aforesaid, of the total number of casks, the mark, number, content, and ullage of each such cask, the temperature, quantity, and strength of the spirits contained therein, the total quantity of spirits, and the names of the ship and master, or conveyance, and of the ports or places of shipment and destination, and name or names of the person or persons to whom such spirits are intended to be sent, and shall forthwith transmit by post a duplicate of such permit to the principal officer of Excise at the port or place nearest thereto, to which such spirits are so to be sent; and if any such spirit shall be removed from England into Scotland or Ireland respectively, or from Scotland or Ireland into England, except spirits so taken from warehouse, and duty paid as aforesaid, or otherwise than as aforesaid, or not accompanied by such permit as aforesaid, or in any greater quantity, or of greater strength, or in casks of any greater number or less content than shall be expressed in such permit, all such spirits, together with the casks containing the same, shall be forfeited, and shall and may be seized by any officer or officers of Excise; and the person or persons so offending shall for every such offence forfeit and lose the sum of treble the value of such spirits, including the duty aforesaid, or of 200*l.*, at the election of the commissioners of Excise, or the person who shall inform or sue for the same."

Penalty on removal of spirits, except from warehouse with permit, &c.

No spirits shall be removed for consumption without payment of English duty before delivery from warehouse.

Sect. 93. "That after such account shall have been taken as aforesaid, and before any such spirits shall be delivered out of any such warehouse for such removal for consumption, the distiller or proprietor intending to remove the same shall pay to the collector of Excise or other person employed by the commissioners of Excise to receive the same, the full

duty of Excise payable on British spirits distilled in England, for and in respect of all such spirits intended to be so removed, whether such spirits shall have been distilled and shall then be warehoused in England, Scotland, or Ireland, and shall be intended to be removed from England into Scotland or Ireland, or from Scotland or Ireland into England; and such collector of Excise or other officer shall, upon request, sign and give to such distiller or proprietor a certificate of such payment of duty."

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Certificate by collector.

Sect. 94. "Provided always, that on the delivery from the warehouse of any spirits distilled or made in Scotland or Ireland for the removal thereof by sea to England for consumption, it shall and may be lawful for the commissioner and commissioners and assistant commissioners and collectors of Excise respectively in Scotland or Ireland to receive and they are hereby respectively authorized to receive and accept from the person or persons to whom such spirits shall be delivered from the warehouse for such removal, in lieu of the whole of the duty by this act made payable thereon, so much thereof as shall be equal to the amount of duty payable on such spirits when delivered for consumption in Scotland or Ireland respectively, together with a bond, with such good and sufficient surety or sureties as shall be satisfactory to the said commissioner or commissioners, or assistant commissioners or collectors respectively, as the case may be, for the due shipment and removal of such spirits as aforesaid, and for payment of the residue of the said duty on the quantity of spirits so delivered from the warehouse for such removal, within two months from the date of such bond, or within twenty-one days after the arrival of such spirits, or any part thereof, in England, whichever shall first happen; and that upon the payment of the residue of such duty, according to the condition of such bond, being certified by the officer of the port in England where the said residue of duty shall be paid, which certificate such officer is hereby required to grant without fee or reward, to the commissioner or commissioners, and assistant commissioners of Excise in Ireland or Scotland, every such bond shall be cancelled; any thing in this act contained to the contrary thereof notwithstanding."

On delivery of spirits from the warehouse in Scotland or Ireland for removal to England, part only of the duty may be paid, with bond for payment of the residue in England within two months from the date of the bond, or twenty-one days after the arrival of the spirits in England, whichever shall first happen.

Sect. 95. "That upon the distiller or proprietor of such spirits, or some person on behalf of such distiller or proprietor, producing to the officer surveying the warehouse the certificate from the collector or other person as aforesaid of the payment of such duty as aforesaid, where such spirits are intended to be so removed for consumption, and such permit having been requested and granted as aforesaid, such officer shall deliver such spirits as shall be mentioned in such certificate and permit to be so removed; and that no such removal shall take place on any Excise-office or Custom-house holiday, or commence at any time of the day before the hour of nine in the forenoon, or continue after the hour of two in the afternoon; and all such spirits shall be shipped, removed, carried, or conveyed to the place of destination mentioned in such permit, and delivered there, in the same casks in which they were originally warehoused, with the marks, numbers, and notes of the contents as aforesaid branded, cut, or painted thereon, except in cases of damaged or leaky casks, which may be changed with the leave of any commissioner of Excise, or of the surveyor or supervisor of the district, and like marks, numbers, and notes shall be branded, cut, or painted on the head of each new cask as had been branded or cut on the leaky or damaged casks respectively, except as varied by any difference of content, ullage, temperature or strength."

On production of collector's certificate of payment of duty, warehouse-keeper shall deliver the spirits to be removed.

Sect. 96. "That no spirits made in England, Scotland, or Ireland shall be shipped or carried, conveyed or removed, from England to Scotland or Ireland, or from Scotland or Ireland to England, otherwise than as provided and directed by this act, or in any ship or vessel of any less burden than fifty tons, or in any cask or vessel, except a cask which shall contain eighty gallons of such spirits at the least, on pain, in addition to all other penalties and forfeitures, of the forfeiture of all such spirits as

No British spirits to be sent from England, Scotland, or Ireland, or either of them, except as hereinmentioned, or in vessels of not less than 50 tons, or in casks containing

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

80 gallons at the least.

shall be so shipped or removed, carried or conveyed, contrary to any or either of the prohibitions aforesaid, together with the casks or packages containing such spirits, and the ship, vessel, or boat, horses, cattle, and carriages employed in such removal thereof, and such spirits, casks, packages, ship, vessel, boat, horses, cattle, and carriages shall and may be seized by any officer or officers of Excise."

Entry to be made of spirits brought from either country into the other, and spirits landed in ten days.

Sect. 97. "That the proprietor or proprietors of any spirits removed by sea from England into Scotland or Ireland, or from Scotland or Ireland into England, shall, within ten days next after the arrival of the ship or vessel wherein any such spirits shall be so removed within the port into which such spirits shall be brought, make due entry with the collector of Excise of the said port of all such spirits on board such ship or vessel, and deliver to such collector such certificate of payment of duty thereon, or permit, as aforesaid, and shall then land all such spirits; and if such proprietor or proprietors shall neglect or refuse, for such ten days as aforesaid, to make such entry, and deliver such certificate of payment of duty as aforesaid, or to land such spirits as aforesaid, such spirits shall be forfeited, together with the casks and packages containing the same, and shall and may be seized by any officer or officers of Excise; and the commissioners of Excise shall cause such spirits to be publicly sold to the best bidder, at and for a price not less than the amount of such duties as aforesaid, at such places as they shall think proper; and if such spirits will not produce a price equal to the amount of the duties payable on such spirits, they shall be destroyed in such manner as the said commissioners of Excise shall think proper, and a reward shall be paid to the seizing officer or officers not exceeding two shillings per gallon, over and above all expenses, in lieu of all other allowances; and if all such spirits shall be duly landed according to the provisions of this act, the proper officer at such port shall deliver to the proprietor or proprietors thereof a certificate thereof, and the commissioners of Excise shall, upon production of such certificate of payment of duty or permit as aforesaid, and of such other certificate of the landing of such spirits as last aforesaid, thereupon cause to be repaid to the proprietor of all such spirits as shall be so removed from England into Scotland or Ireland, and on which the Excise duty payable in England has been duly paid for and in respect of every gallon of such spirits computed at proof, the difference between the amount of the duty so paid and the duty payable in the country into which such spirits shall be so brought."

Commissioners to cause such spirits to be publicly sold.

The commissioners may reward the officers not exceeding 2*s.* per gallon, if spirits be destroyed.

On spirits sent from England to Scotland or Ireland duty paid, the difference between the English and Scotch or Irish duty shall be repaid on the quantity landed.

The number of casks, and the particular number and mark of each, to be inserted in the entries.

Sect. 98. "That in all such entries so to be made, the number of casks and other packages containing such spirits, with the particular numbers and marks of each of them on board of each respective ship or vessel in which the same shall be so brought, shall be inserted, on pain for every neglect or refusal thereof to forfeit all such spirits, with the cask or other package wherein the same shall be contained, and the same shall and may be seized by any officer or officers of Excise."

Spirits made entirely from malt shall be warehoused separately, and not be removed to England unless on repayment of allowance.

Sect. 99. "Provided always, that no spirits which shall be or shall have been made or distilled in Scotland or Ireland respectively from unmalted corn or grain, mixed or unmixed with malt, shall be taken out of any warehouse, store, or place for removal to England, unless such spirits were made and warehoused by some distiller having, at the time when such spirits were so made and warehoused, no spirits made from malt only, or on which any allowance shall be or shall have been made in respect of the duty on such malt in his or her stock or possession or in such warehouse, and which shall be so certified by the proper officer at the time of warehousing, and also at the delivery thereof; nor shall any spirits made or distilled in Scotland or Ireland from malt only, or in respect of which any allowance as aforesaid has been or shall be made, paid, or received, be removed to England until the allowance so made shall have been repaid by the proprietor of such spirits to the commissioners of Excise, or such person as they shall order or direct to

Penalty for removal of spirits, &c., forfeiture of spirits, 20*s.* for every gallon of spirits taken, or 100*l.*

receive the same; and if any person or persons shall take out of any warehouse, store, or place any spirits made from unmalted corn or grain mixed or unmixed with malt for such removal, which were not made and warehoused by such distiller as aforesaid, and shall not be so certified as aforesaid, or shall remove any spirits made from malt only, or on which any such allowance as aforesaid has been made or shall be made as aforesaid, to England, without first repaying such allowance thereon as aforesaid, all such spirits shall be forfeited, and shall and may be seized by any officer or officers of Excise; and every person so offending shall for every such offence forfeit and lose the sum of 20*s.* per gallon for every gallon of such spirits so taken out or removed, or 100*l.*, at the election of the commissioners of Excise or person who shall inform or sue for the same."

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Sect. 100. "That it shall and may be lawful to deliver in casks of not less than eighty gallons, from any such warehouse as aforesaid, any spirits lodged and secured therein as aforesaid, for the purpose of being shipped as stores, and of being consumed upon any outward and homeward voyage to or from parts beyond the seas, without payment of the duty of Excise, subject nevertheless, except as aforesaid, to the conditions, regulations, restrictions, and securities required by any act or acts in force in Great Britain relating to the shipping of rum as stores" (*a*).

Warehoused spirits may be shipped as stores without payment of duty, under like conditions as rum is allowed to be shipped as stores.

Sect. 101. "And to remove all doubts respecting the denomination of spirits, and of spirits of different distillations, be it further enacted, that all spirits distilled or made in England, or distilled or made in Scotland or Ireland and imported into England, shall be deemed and called British spirits; and that all spirits of the first extraction, drawn or produced by one distillation of wash, shall be deemed and called low wines; and that all spirits produced by the redistillation of low wines, or any further redistillation, and which shall be conveyed into or kept in any feints receiver, shall be deemed and called feints; and that all other spirits produced by redistillation, and which shall not have had any flavour communicated thereto, and all liquors whatsoever which shall be mixed or mingled with any such spirits, shall be deemed and called plain British spirits; and that all other spirits produced by redistillation, and which shall have had any flavour communicated thereto, and all liquors whatsoever which shall be mixed or mingled with any such spirits, shall be deemed a British compound called British brandy; and that all other spirits produced by redistillation, and which shall have been distilled or mixed with juniper berries, carraway seeds, anniseeds, or any any other seeds, preparation, or ingredient whatsoever, used in the compounding of spirits, and all liquors whatsoever which shall be mixed or mingled with any such spirits, shall be deemed and called British compounds; and that all British spirits of the strength of forty-three per centum above proof, as denoted by the hydrometer called Sykes's hydrometer, and all spirits of a greater or higher degree of strength, shall be deemed and called spirits of wine; and if any question shall arise, whether any spirits removed by any permit are *bonâ fide* such British spirits, plain British spirits, or British compounds of any particular sort or kind, or spirits of wine respectively, as are described and specified in the permit accompanying the same, or granted for the removal thereof, although such spirits shall appear to have been kept account of in the officer's books, or account of stock from which spirits were removed, by the same name or description as is specified in such permit, the proof that such spirits are really and *bonâ fide* of the sort specified in such permit shall lie upon the owner or claimer thereof, who shall prove the same by the oaths of two credible witnesses, being

Denominations of spirits of different distillations.

Proof of spirits removed being such as described in permit to lie upon owners.

(*a*) These and the provisions commencing at sect. 82, more particularly relate to spirits made for exportation.

(15). *Spirituous liquors.*

skilful and experienced persons, competent to decide by examination thereof."

6 Geo. 4, c. 80.

Penalty on rectifiers, &c. having in their custody any wort, &c., or distilling same into low wines or spirits, or receiving spirits without permit, 500*l.* &c.

Sect. 102. "That if any rectifier or compounder of spirits shall have in his, her, or their custody or possession any wort, wash, or other fermented liquor, or materials prepared or fit for the purpose, or capable of being distilled into low wines or spirits, or shall distil or extract any low wines or spirits from wort, wash, or other fermented liquor or materials, not being British spirits, or colonial spirits, lawfully received into stock to be rectified or compounded; or shall have in his custody or possession any spirits whatsoever, without having received and delivered to the proper officer a legal permit with and for the same; or any foreign or colonial spirits, except colonial spirits for the purpose of being rectified or compounded, and sold by such rectifier or compounder as and for spirits of wine or compounded spirits; every such rectifier or compounder of spirits shall (over and beside all other penalties and forfeitures) forfeit and lose for every such offence the sum of 500*l.*, or the sum of 20*s.* for each and every gallon of such wort, wash, or other fermented liquor, or materials prepared or fit for the purpose, or capable of being distilled into low wines or spirits, or of the low wines or spirits so distilled as aforesaid, or of the spirits received without being accompanied with a true and legal permit, delivered to the proper officer as aforesaid, or of the foreign or colonial spirits, except as aforesaid, as the case may be, at the election of the commissioners of Excise, or of the person who shall sue or prosecute for such penalty; and the licence of every rectifier or compounder of spirits who shall be a second time convicted of any of the offences aforesaid shall upon such second conviction be deemed void to all intents and purposes; and such rectifier or compounder shall not be capable of receiving any further or renewed licence as a rectifier or compounder of spirits for the period of three years from the date of such second conviction."

Second offence, forfeiture of licence.

No person to be deemed a rectifier, &c. who has not at least one still of 120 gallons; and no person to carry on business of a rectifier, &c. contrary hereto.

Sect. 103. "That no person or persons shall be deemed a rectifier or compounder of spirits within the meaning of this act, who shall not have at least one entered still capable of containing in the body thereof, exclusive of the head, 120 gallons at the least, nor unless such still shall have a suitable worm and worm tub affixed thereto, and shall be really and *bonâ fide* used for the rectifying or making of British compounds for sale by such person or persons; and any person who shall carry on the business of a rectifier or compounder of spirits, contrary to the directions of this act, shall be subject and liable to and shall incur all the penalties and forfeitures by this act inflicted on persons using or working any unlicensed still."

Rectifiers or compounders having conveyances to or from stills not hereby permitted, or not paying for locks and fastenings for securing the charge and discharge cocks, or opening or breaking locks or fastenings, shall forfeit 200*l.*

Sect. 104. "That no rectifier or compounder of spirits shall have or keep any opening, fixed pipe, or other conveyance whatever, leading to any still or stills belonging to or used by such rectifier or compounder, other than and except one charging pipe to each such still; nor shall have or keep any opening, fixed pipe, or other conveyance whatever, leading from any such still or stills, save and except the discharge cock to each still respectively belonging, and the head of such still terminating in the worm; and proper locks and fastenings shall be provided and maintained by the proper supervisor of the district, at the expense and charge of every such rectifier or compounder, for properly and sufficiently locking and securing the charge and discharge cock of each and every still respectively used by such rectifier or compounder, which locks and fastenings shall be locked and sealed by the proper officer of Excise, and shall be and remain always so locked and sealed when the still is at work; and if any such rectifier or compounder shall have or keep any such opening, fixed pipe, or other conveyance (not before excepted) leading to or leading from such still or stills, or shall refuse to pay for and maintain such locks and fastening as aforesaid, or shall prevent or hinder the officer from affixing any lock or fastening as aforesaid, or shall wilfully open, break, or damage, or cause or suffer to be

opened, broken, or damaged, any of such locks, seals, or fastenings as aforesaid, every such rectifier or compounder shall for every such fixed pipe, opening, or conveyance (not before excepted), and for every such lock, seal, or fastening, forfeit and lose the sum of 200*l.*"

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Rectifiers or compounders who do not charge their stills as herein directed, or work them off within sixteen hours, to forfeit 100*l.*

Sect. 105. "That every such rectifier or compounder of spirits shall, before beginning to draw off any spirits from any still or stills, charge the same with a quantity of liquor, in the proportion of not less than seven parts in ten of the whole quantity of liquor which any such still, including the head, is capable of containing; and every such still shall remain and continue so charged until the rectifier or compounder shall begin to draw off spirits therefrom; and every such still shall be worked off within sixteen hours, to be computed from the time of the officer's taking the gauge thereof respectively; and if any such rectifier or compounder shall begin to draw off any spirits from any still or stills not so charged, or shall not work off the same respectively within such sixteen hours, such rectifier or compounder shall forfeit and lose the sum of 100*l.*"

Rectifiers or compounders shall cause the heads of their stills to be taken off so soon as the same shall cease to be worked, &c. on penalty of 100*l.*

Sect. 106. "That every such rectifier or compounder of spirits shall take off, or cause to be taken off, the head or heads of any still or stills, except any still or stills whose head is soldered or permanently fixed to the body of such still, when and so soon as any such still or stills shall have ceased to be worked; and the head or heads of such still or stills shall in no case, nor on any pretence, or on any account, be put on such still or stills, until each such still shall be again charged and ready to work, nor shall any still be again worked by any rectifier or compounder until the officer shall have examined the quality of the spirits then in each such still; and if any such rectifier or compounder shall neglect to take off each and every head from each respective still, except as aforesaid, within twelve hours after each such still shall have ceased to be worked, or shall in any case, or on any pretence or account whatsoever, put on any such head or heads on any such still or stills before such still or stills shall be charged and ready to work, or shall work any still or stills before the officer shall have examined the quality of the spirits then in such still or stills, every such rectifier and compounder so offending shall for each and every such offence forfeit and lose the sum of 100*l.*"

Rectifiers or compounders, or dealers or retailers or other persons receiving or buying spirits from any but licensed distillers or rectifiers or compounders of or dealers in or retailers of spirits, or at the public sales of condemned spirits, to forfeit 500*l.*

Sect. 107. "And for the more effectually preventing the receiving or buying by any person whomsoever of spirits from persons privately distilling or unlawfully importing or landing the same, be it further enacted, that if any rectifier or compounder of or any dealer in or retailer of spirits, or any other person whomsoever, in any part of England, shall receive or buy or shall procure or employ any person to receive or buy any spirits from any person or persons whomsoever, except from some licensed distiller, rectifier, or compounder of spirits, whose name shall be painted over the outward door of his stillhouse, storehouse, warehouse, shop, cellar, vault, or other place, in manner required and directed by this act, or from some licensed dealer in or retailer of spirits, or at some public sale of spirits condemned and sold under the direction of the commissioners of Excise or Customs, every such person so offending shall for every such offence forfeit and lose the sum of 500*l.*: Provided always nevertheless, that nothing herein contained shall extend or be construed to extend to make any person or persons liable to the aforesaid penalty of 500*l.* for or by reason of the receipt or purchase of any foreign or colonial spirits, or British spirits, brought into England from Scotland or Ireland, under the provisions of this act, whilst the same shall be lying openly on the lawful quays on which such spirits respectively shall have been first landed upon the importation thereof or removal thereof from Scotland or Ireland, or in any warehouse or warehouses in which such foreign or colonial spirits shall be or may have been deposited by such seller according to law; and every such seller of British spirits imported into England from Scotland and Ireland respectively being at that time duly licensed under this act as a dealer in spirits."

But this penalty not to extend to the purchase of spirits whilst on the quays, or in the warehouses in which lodged on importation.

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Officers may enter all places used by rectifier or compounder or dealer in or retailer of spirits, and take account and take samples, paying for them the usual price.

Sect. 108. "That it shall and may be lawful to and for all and every the officers of Excise, from time to time and at all times by day or by night, upon his or their request, but if in the night in the presence of a constable or other officer of the peace, to enter into all and every the houses, warehouses, storehouses, rooms, shops, cellars, vaults, and other places made use of by any rectifier or compounder of, or dealer or dealers in, or retailer or retailers of spirits for the laying or keeping of any spirits; and by tasting, weighing, gauging, or otherwise, to take an account of the quantity and quality and strength respectively of all or any such spirits which shall at any time be in his, her, or their custody or possession, and to take at any time or times a sample or samples of any such commodities, paying for the same the usual price thereof, if demanded."

Officers to take account of the stocks of rectifiers or compounders or dealers, as often as they may think fit; and if any excess be found, it shall be forfeited, and distillers, &c. shall also forfeit 20*s.* per gallon.

Sect. 109. "That every officer of Excise shall, as often and at such times as he may think fit, take an accurate and true account of the quantity and strength of all spirits in the stock, custody, or possession of all and every rectifier or compounder of or dealer in spirits, and shall compute the same at the strength of hydrometer proof; and if, after making allowance for the spirits for which permits shall have been granted since the last account taken of the stock of such rectifier or compounder or dealer, computing the same at the strength aforesaid, it shall be found that the quantity of spirits remaining in the stock, custody, or possession of such rectifier or compounder or dealer shall exceed the quantity for which such rectifier or compounder or dealer shall have credit in the books of the proper officer, whether such credit shall have arisen from what was on hand at the last preceding account taken, or from what may have been lawfully received subsequent thereto, such excess shall be deemed and taken to be spirits illegally received, and a quantity of spirits of the like kind, equal to such excess, shall and may be seized out of any part of the stock of such rectifier or compounder or dealer by any officer or officers of Excise; and the rectifier or compounder or dealer in whose stock, custody, or possession such excess shall be found shall forfeit and lose the sum of 20*s.* per gallon for every gallon of such excess; and if there be any decrease in such stock, not duly accounted for by spirits sent out with permit, and exceeding five per centum on the balance or stock left on hand at the last preceding account, together with the quantity since lawfully received, the rectifier or compounder or dealer in whose stock such decrease is found shall forfeit and lose the sum of 20*s.* per gallon for every gallon of such deficiency."

Spirits produced from rectifiers' stills at work when stocks are taken, to be afterwards added.

Sect. 110. "Provided always, that if any still of any rectifier or compounder of spirits shall happen to be charged and at work at the time when any officer shall take account of the stock of any such rectifier or compounder, then and in every such case all the spirits produced from that charge of the still shall be kept separate and apart from the rest of such stock till the account of the rest of such stock shall have been completely taken, after which the spirits of or produced from that charge shall be added to such stock."

No rectifier, compounder, dealer, or retailer receiving spirits shall break bulk till the officer, to whom notice shall be given, take an account of the strength and quantity.

Sect. 111. "That no rectifier or compounder of or dealer in spirits receiving any spirits, or any retailer of spirits receiving any spirits of any less quantity than a cask containing eighty gallons, into his, her, or their custody or possession, shall break bulk, or draw off any part thereof, or add water or any thing thereto, or in any respect alter the same, or tap or open any of the casks so received, or alter or change any of the packages containing any spirits, or the spirits therein removed, until the proper officer or officers of Excise shall have taken an account of the strength and quality thereof; and every such rectifier or compounder or dealer or retailer as aforesaid, shall, on the receipt of any spirits, give notice thereof to the proper officer of Excise, and shall deliver to such officer the permit received by them with such spirits, whereupon such officer shall attend and take an account of the strength and quantity of such spirits; and if any such rectifier or compounder, dealer or retailer,

Penalty, forfeiture, and 200*l.*

who shall receive any such spirits as aforesaid into his, her, or their custody or possession, shall fail to give such notice and deliver such permit as aforesaid, or shall break bulk, or draw off any part of such spirits, or add water or any thing thereto, or in any respect alter the same, or tap or open any of the casks, or alter or change any of the packages containing any such spirits, or the spirits therein removed, until the proper officer or officers of Excise shall have taken an account of the strength and quantity thereof, all such spirits, or a quantity equal thereto, shall be forfeited, and shall and may be seized out of any part of the stock of such rectifier or compounder, dealer or retailer, by any officer or officers of Excise; and every such rectifier or compounder, dealer or retailer, so offending, shall for every such offence forfeit and lose the sum of 200*l.*: Provided always, that in case the proper officer of Excise shall neglect to attend, for the purpose of taking such account as aforesaid, within two hours after receiving such notice, no forfeiture or penalty shall be incurred for any such offence."

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Rectifiers or compounders, dealers, and retailers not marking the quantity and strength of mixed or compounded spirits on casks, or marking them untruly, to forfeit the same, and 50*l.*

Sect. 112, "That in all cases where the strength of any part of the stock of any rectifier or compounder of spirits, or any dealer in or retailer of spirits by being mixed or compounded with any sugar, syrup, seeds, fruit, or any other ingredients or materials, cannot be easily ascertained by the hydrometer, every such rectifier or compounder, dealer and retailer, shall immediately, or on being required by an officer or officers of Excise, cause the true quantity and degree of strength of such spirits so mixed to be legibly marked on the outside of the cask or casks or vessel or vessels containing the same respectively; and if the strength of such spirits shall be found to have been untruly marked by such rectifier or compounder, dealer or retailer, on the outside of such cask or casks, or vessel or vessels, or if such rectifier or compounder, dealer or retailer, shall, upon being required by the officer or officers of Excise as aforesaid, neglect immediately to mark the quantity and degree of strength of such spirits as aforesaid, or not continue such mark until all the spirits in such cask or vessel shall be removed and taken therefrom, such spirits, syrup, seeds, fruit, and other ingredients, together with the casks and vessels containing the same, shall be forfeited, and shall and may be seized by any officer or officers of Excise, and every such rectifier or compounder, dealer or retailer, shall also for each and every such offence forfeit and lose the sum of 50*l.*: Provided always, that no such penalty shall be incurred by any dealer or retailer who shall mark on any such cask of compounds, as the strength of the spirits therein contained, the strength expressed in the permit with which the same were received by such dealer or retailer into stock, no alteration having been since made therein."

Rectifiers, &c. may send out compounded spirits at any strength, not exceeding 17 per centum under proof, and also spirits of wine, and not in any less quantity than two gallons, but no other spirits.

Sect. 113. "That it shall and may be lawful for any rectifier or compounder of spirits to sell and send out, accompanied with a true and lawful permit, to any person or persons, any quantity not being less than two gallons of compounded spirits, at any strength not exceeding 17 per centum under hydrometer proof; and to any person any quantity not being less than two gallons of spirits of wine; and that if any plain British or colonial spirits, not being spirits of wine, or if any other spirits, not being compounded spirits, or if any compounded spirits, except by permit, and of such strength as aforesaid, and not being less than two gallons at any one time, shall be sold or sent out by any rectifier or compounder of spirits, contrary to this act, all such spirits, with the casks or other packages containing the same, and all horses, cattle, carriages, and boats made use of in removing such spirits, shall be forfeited, and may be seized by any officer or officers of Excise."

Strength of spirits of wine 43 per centum over proof at the least, and to be permitted and stocked accordingly, and kept separate.

Sect. 114. "That all spirits of wine shall be made and kept of the strength of 43 per centum over hydrometer proof at the least; and that the actual and true strength of all spirits of wine shall be expressed and specified in the request note for a permit, and in the permit granted for or to accompany the removal thereof, and shall be taken account of by

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Penalty of 200*l.* and forfeiture of spirits.

the officer in the respective stocks of every rectifier or compounder of and dealer in and retailer of spirits respectively, according to the actual strength thereof; and that every dealer in and retailer of spirits shall keep all spirits of wine in a separate and distinct cellar or place entered for that purpose; in which no other spirits or foreign wine or sweets is, are, or shall be kept; and if any spirits of wine shall, from and after the 5th day of January, 1826, be kept or removed, of less strength than as aforesaid, or be mixed or mingled with any foreign wine, foreign or colonial spirits, or British spirits, or by any means be by such dealer or retailer reduced lower or weakened in the strength thereof, or shall be removed without a permit, when required by law, expressing the strength thereof, or shall be found in or upon the premises or in the custody or possession of any such dealer or retailer as aforesaid, otherwise than in such separate entered cellar or place as aforesaid, all such spirits of wine, and all wine or spirits with which any spirits of wine shall be so mixed or mingled or found, shall be forfeited, and the rectifier or compounder of and dealer and retailer as aforesaid offending therein shall respectively forfeit and lose the sum of 200*l.*"

No spirits to be removed without permit, on pain of forfeiture, with vessels, &c. and 20*s.* per gallon.

Sect. 115. "That no spirits whatever shall be sent out of the stock, custody, or possession of any distiller, rectifier, or compounder of or dealer in spirits, nor shall be removed from the distillery, stillhouse, building, or other place wherein the same were made or manufactured, or rectified or compounded, or kept, by any distiller, rectifier, or compounder of or dealer in spirits, without a permit first granted and signed by the proper officer of Excise, upon a request note subscribed by such distiller, rectifier, or compounder, or dealer respectively, or by some person on his or her behalf, and delivered to such officer, specifying therein the quantity (*a*), quality, sort, or kind, and strength of such spirits, and also specifying the casks or other vessels containing the same, the person from whom and place from which and the person to whom and the place to which such spirits are to be sent, and by what mode of conveyance the same are intended to be sent, and whether by land or by water, which permit shall be made by the officer to correspond, in respect to all the particulars aforesaid, with such request note; and a reasonable time shall be limited and specified in every such permit, within which such permit is to be in force, and no permit shall be valid or of any effect, if the same shall be granted, or any request note not made conformably to the directions of this act; and all such spirits which shall be sent out, removed, or carried, or found removing or carrying, without such permit as aforesaid, together with the casks, vessels, and other packages containing the same, and also the boats and other vessels, and the horses and other cattle, and carriages made use of in the removal or conveyance thereof, shall and may be seized by any officer or officers of Excise; and if any distiller, rectifier, or compounder, or dealer, shall send out, deliver or carry, or knowingly permit or suffer to be sent out, delivered, or carried, any spirits whatsoever, from or out of the stock, custody, or possession of such distiller, rectifier or compounder, or dealer, respectively, or from or out of any house, building, or other place wherein such spirits were made, manufactured, rectified, compounded, or kept by any such distiller, rectifier, or compounder of or dealer in spirits, without such permit as aforesaid, or with any permit not corresponding to such spirits in quantity, quality, sort, or kind, and strength, every such distiller, rectifier, or compounder, or dealer, shall, over and above the forfeiture of the said

(*a*) A dealer in spirits, having a permit to remove 420 gallons, and removing 450, forfeits the whole quantity, and the fraudulency of the transaction is not matter of inquiry by a jury. (*Hall* v. *Dracord*, 2 *W. Black.* 1289). *Quære:* if A. brings 76 gallons of spirits into an entered cellar under a permit for 64, whether the whole quantity or the excess is forfeited under 9 Geo. II. c. 23, s. 7. (*Rex* v. *Bass*, 5 *T. R.* 251).

spirits, if seized, forfeit and lose the sum of 20*s.* for every gallon of the spirits so sent out, carried, or conveyed, of whatever strength the same may be, and whether the said spirits shall or shall not be seized: Provided always, that no such permit shall be granted to a distiller for any smaller quantity of spirits than eighty gallons contained in one cask, or to any rectifier or compounder of or dealer in spirits for any smaller quantity than two gallons."

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Sect. 116. "That if any retailer of spirits, or other person, licensed or not licensed, shall sell or send out, deliver or remove, or shall knowingly suffer to be sent out of, delivered or removed from his or her stock, custody, or possession, any spirits exceeding one gallon, without the same being accompanied by a true and lawful permit, to be requested and granted as aforesaid; or if any rectifier or compounder of or dealer in or retailer of spirits shall receive or knowingly suffer to be received into his or her stock, custody, or possession, or shall suffer any other person, for his or her use or account, to receive any spirits without the same being accompanied with a true and lawful permit so granted as aforesaid; or if any carrier, boatman, or other person shall knowingly carry, remove, or transport, or by means of his horse, cattle, cart, vessel, boat, or other conveyance, shall knowingly suffer to be carried, removed, or transported, or shall be aiding or assisting in carrying, removing, or transporting, from any part of England to another part thereof, any spirits which by law ought and is required to be accompanied with a permit, without being accompanied with such a true and lawful permit, granted as aforesaid in that behalf, every such rectifier or compounder, dealer, retailer, carrier, boatman, or other person whomsoever, shall for each and every such offence forfeit and lose the sum of 200*l.* over and above every other penalty and forfeiture to which he or she is or may be liable by virtue of this act; and all such spirits, and the package and packages in which the same shall be contained, and every such horse, cart, vessel, boat, and other conveyance, and all such cattle, shall be forfeited, and shall and may be seized by any officer or officers of Excise."

No retailer or other person shall send out or receive any spirits exceeding one gallon, without permit, nor shall any person carry same, on pain of forfeiting 200*l.*

Sect. 117. "That no distiller, rectifier, or compounder of, or dealer in, or retailer of spirits shall send out or remove from his, her, or their stock, custody, or possession, nor shall any rectifier or compounder of or dealer in, or retailer of spirits, or other person, receive into his, her, or their stock, custody, or possession, any spirits, unless the permit or permits accompanying such spirits shall truly express the sort or kind thereof, and the strength of all such spirits at the time of the removal thereof; and all such spirits so removed, sent out, or received, not being accompanied with a true and lawful permit or permits, where a permit is by law required, expressing the sort or kind, and the strength thereof, shall be forfeited, and may be seized by any officer or officers of Excise; and every such distiller, rectifier, or compounder, dealer or retailer, so sending out, and every such rectifier or compounder, dealer, retailer, or other person so receiving such spirits, shall for each and every such offence forfeit and lose the sum of 100*l.*; and no rectifier or compounder of or dealer in spirits shall have (except as after mentioned) credit in stock for any greater quantity of spirits received or found in his or her stock than for the quantity computed at proof brought in by such permit or permits as aforesaid delivered to the officer; nor shall any retailer of spirits have credit in stock for any greater quantity of spirits received into his or her stock, except as after mentioned, than for the bulk or quantity of spirits in gallons brought in and expressed by such permit or permits as aforesaid, accompanying such spirits, and delivered to the officer."

No spirits to be sent out or received into stock, unless permit shall truly express the strength, on pain of forfeiture, and penalty of 100*l.*

Rectifiers, &c. to have credit for quantity expressed in permits, computed at proof.

Retailers to have credit in stock, according to gallons or bulk.

Sect. 118. "That it shall and may be lawful for any officer or officers of Excise to stop and detain any person or persons who shall be found removing or carrying any spirits of any kind from the stock of any dis-

Officers of Excise authorized to stop any person found removing or car-

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

rying spirits, and examine permits.

tiller, rectifier, or compounder or dealer in or retailer of spirits, or from the stock of any person or persons whomsoever, and to demand the production of the permit or permits accompanying such spirits; and on being satisfied that the spirits are the same in quantity, quality, sort, or kind, and strength as expressed in such permit or permits, and that the duty payable by law in respect thereof has been paid or secured to be paid for the same, such officer or officers shall endorse on such permit or permits the time, hour, and place of such examination, and shall sign his or their name or names thereto; and if any person or persons so found removing or carrying any such spirits, which are by law required to be accompanied with a permit, shall refuse to produce such permit or permits as aforesaid immediately on being required so to do by any officer or officers of Excise for the purposes aforesaid, or shall be found removing or carrying any such spirits without a lawful permit, every such person shall for every such offence forfeit and lose the sum of 100*l.*; and it shall be lawful for such officer or officers, and he and they is and are hereby authorized, empowered, and required to stop, arrest, and detain every such person or persons, and to convey the said person or persons, together with the spirits so found removing or carrying by or with him or them, before one or more of his Majesty's justices of the peace residing near to the place where any such person shall be so stopped or arrested; and it shall be lawful for such justice or justices of the peace, and he and they is and are hereby required, and shall have full power and authority to hear and determine forthwith any information against any such person or persons so stopped or arrested under the provisions of this act, and on the confessions of any such person or persons, or upon proof on oath by one or more credible witness or witnesses, to convict such person or persons in such penalty respectively as aforesaid; and no such penalty shall be mitigated by any justice or justices below one-fourth part thereof; and every such person so convicted as aforesaid shall immediately on such conviction pay down into the hands of such officer the said penalty in which he or they shall be so convicted; and if any such person or persons so convicted shall not forthwith pay down the said penalty, the said justice or justices shall, and he and they is and are hereby respectively authorized and required, by warrant under his or their hand and seal, to commit the person so convicted as aforesaid to any gaol or prison of the county, there to be kept to hard labour for the space of not exceeding six nor less than three calendar months, unless such penalty be sooner paid."

Penalty 100*l.* on persons refusing to produce the permit.

Restriction as to mitigation of penalty.

If permit for spirits not delivered with goods, they shall be forfeited to buyer, and double price, &c.

Sect. 119. "That if any permit granted for spirits shall not be sent and delivered with such spirits unto the buyer thereof, such spirits shall, if the same be not seized in the transit for want of a lawful permit accompanying the same, be forfeited to the buyer thereof, and the seller shall be rendered incapable of recovering the same, or the value or price thereof, in any court of law or equity; and also that the seller in such case shall, over and besides the loss of the said spirits, forfeit and lose double the value of or price agreed to be paid for the same, including the duties; and that the evidence of the buyer or person receiving the said spirits shall, on any trial as to such spirits, be admitted to prove that the same were delivered without a lawful permit."

Permits for removal of spirits shall be granted under regulations of permit laws, except as altered and otherwise directed by this act.

Sect. 120. "That every permit which shall be granted for the removal of any spirits under any of the provisions of this act shall be granted and issued, obtained and used, under the rules, regulations, and provisions of any act or acts of Parliament in force in England for regulating the granting and issuing of permits for the removal or conveyance of exciseable goods, or in any act or acts in any manner relating to such permits (except so far as the same may be expressly altered and otherwise directed by this act); and that all and every the clauses, provisions, fines, penalties, and forfeitures inflicted or imposed by the said acts or any of them shall extend and shall be construed to extend to

and shall be applied in the execution of this act, and to all and every permit and permits which shall be granted for the removal of any spirits under this act, and to the persons issuing, obtaining, or using the same, as fully and effectually to all intents and purposes as if the said clauses, provisions, fines, penalties, and forfeitures were repeated and re-enacted in this act."

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Penalty for frustrating purpose of permit obtained for removal of spirits, 500*l.* and forfeiture of licence.

Sect. 121. "That if any distiller or other person shall deliver, remove, or receive any spirits, for the removal of which a permit is by law required, without such permit, or any greater quantity of spirits, or of a different kind or quality, or of a greater or higher strength than shall be expressed in such permit, or having obtained such permit, shall not send out therewith the spirits therein described, or return the said permit to the proper officer of Excise within the time by law required; or if any distiller or other person shall request, obtain, sell, lend, deliver, employ, or make use of any such permit, or shall cause or suffer any such permit to be requested, obtained, sold, lent, delivered, employed, or made use of, to or for any other use or purpose whatsoever, than to accompany the actual removal and delivery of the spirits as therein expressed; or shall produce, or cause or suffer any such permit to be produced to any officer or other person, as having been received with any spirits other than as aforesaid, or shall in any manner use or employ, or cause or suffer to be used or employed, any permit, so as that any account of spirits kept or checked, or to be kept or checked, by the officer or officers (*a*) of Excise by such permit, shall or may be frustrated or evaded, then and in every such case every such distiller or other person shall for every such offence severally forfeit the sum of 500*l.*, over and above all other penalty and penalties, forfeiture and forfeitures whatever; and every permit used for any purpose whatever other than to accompany the removal and delivery of the spirits for which such permit was obtained and granted, and as therein expressed or described, shall be deemed and taken to be a false permit, and such unlawful use thereof shall, over and above all other penalties and forfeitures, subject the person or persons so using the same to all and every the penalties and forfeitures imposed by law upon any person or persons for using, giving, or receiving any false permit; and every person having any licence to make, deal in, retail, or sell spirits, shall, upon being convicted of any such offence as aforesaid, forfeit every such licence, and no new licence shall be granted to such person so convicted, for the remainder of the current year of any licence so forfeited."

Persons having in custody more than 80 gallons of spirits to be deemed dealers.

Sect. 122. "That all and every person or persons whomsoever, who shall have in his, her, or their custody any spirits exceeding the quantity of eighty gallons, and not being an entered and licensed distiller, rectifier, or compounder, or retailer of spirits, shall be deemed and taken to be a dealer in spirits, and subject to the survey of the officers of Excise, and to all regulations, penalties, and forfeitures to which such dealers are subject and liable."

Casks used by dealers or retailers for spirits in stock, to be entered, on forfeiture of 100*l.* and the cask and liquor in it, and to have the contents painted, cut, or branded thereon, under penalty of 50*l.*

Sect. 123. "And, for enabling the officers of Excise the more readily to take account of dealers' and retailers' stocks of spirits, be it further enacted, that all standing or fixed casks, used by any dealer in, or retailer of spirits, for the keeping in stock of any spirits, shall, before the same shall be made use of, be duly entered by such dealers and retailers respectively, upon pain of forfeiture by the person or persons in whose stock the same should be found, of the sum of 100*l.* for every such cask which shall be so used without having been duly entered as aforesaid, and also of every such cask, with the liquor contained therein; and that upon every such cask used by any dealer in, or retailer,

(*a*) Upon the 57 Geo. III. c. 123, s. 13, it was held, that the words "officer or officers," used therein, are general, and apply to *any* officer of Excise whose accounts may be frustrated or evaded by the fraudulent use of permits. (*The Attorney-General* v. *Slee, M'Cleland's Rep.* 567).

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6 Geo. 4, c. 80.

for holding or keeping any spirits in stock, its full measure in gallons, or the quantity of liquor it is capable of containing, and also the name of the quality, strength, sort, or kind of spirits kept or contained therein, shall be legibly painted, cut, or branded on some conspicuous part thereof, upon pain that the dealer or retailer in whose custody or possession any cask so used shall be found, not having such full measure thereof, and such particulars as aforesaid, painted, cut, or branded thereon as aforesaid, or which shall contain a different quantity, quality, strength, sort, or kind of spirits from what shall be painted, cut, or branded thereon as aforesaid, shall forfeit and lose the sum of 50*l.* for every such default, omission, or offence as aforesaid."

No dealer to send out or keep any plain British spirits, or any compounded spirits, but of a certain strength, &c.

Sect. 124. "That no dealer in British spirits shall sell, or send out, or receive, or have or keep in his or her stock, custody, or possession, any plain British spirits, except spirits of wine, of any strength exceeding the strength of twenty-five per centum above hydrometer proof, or of any strength below seventeen per centum under hydrometer proof, or any compounded spirits, except shrub, of any greater strength than seventeen per centum under hydrometer proof, on pain of forfeiting all such spirits as shall be sold, sent out, had, or kept by any such dealer contrary hereto, with the casks or other packages containing the same, which shall and may be seized by any officer or officers of Excise."

Dealer may send out spirits of wine received by permit, and kept separate from other spirits, not exceeding 100 gallons to one person in same day.

Sect. 125. "Provided always, that it shall and may be lawful to and for any dealer in spirits to have in his custody or possession any spirits of wine legally received by permit, upon condition of his, her, or their keeping his, her, or their whole stock of such spirits of wine separate and apart from his, her, or their stock of all other liquors, and in a vault or room specially entered for that purpose as aforesaid, but not otherwise, and to demand and receive permits for sending out spirits of wine of the strength of forty-three per centum above hydrometer proof, or any higher degree of strength, so that the whole quantity of such spirits of wine to be sent to any one person in the same day shall not exceed 100 gallons; and the officer granting such permit shall therein express the same to be spirits of wine, and shall debit the stock of such dealer accordingly."

Dealers in foreign spirits to keep British spirits in separate places, on forfeiture of 100*l.* or 20*s.* for every gallon found.

Sect. 126. "That every dealer in spirits who shall have or receive into his custody or possession any foreign or colonial spirits (not being compounded colonial spirits), and also any British spirits, shall keep the same separate and apart, and in separate cellars, vaults, or other places, specially entered for that purpose respectively, upon pain of forfeiting the sum of 100*l.*, or 20*s.* for every gallon of British spirits, or compounded spirits, which shall be discovered or found in his custody or possession, in any vault, cellar or other place, not specially entered for that purpose, or where any foreign or colonial spirits (not being compounded colonial spirits) shall be found or kept; and for every gallon of foreign or colonial spirits (not being compounded colonial spirits) which shall be discovered or found in his custody or possession, in any vault, cellar, or place, not specially entered for that purpose, or where any British spirits, or compounded spirits shall be found or kept, together with all such spirits so discovered and found, and the casks and packages containing the same, which shall and may be seized by any officer or officers of Excise; and that no person or persons whomsoever shall mix or keep, sell or send out, any British spirits mixed with foreign or colonial spirits, upon pain of forfeiting for every such offence the sum of 100*l.*; and all such spirits so mixed or sold, or sent out, contrary to the true intent and meaning hereof, together with the casks and packages containing the same, shall also be forfeited and lost, and shall and may be seized by any officer or officers of Excise: Provided always, that every dealer in and retailer of spirits shall be allowed on all foreign or colonial spirits (not being compounded colonial spirits) lawfully brought into his or her stock, additional credit, over and above credit for the number of gallons expressed in the permit accompanying such spirits, and delivered to the

British not to be mixed with foreign or colonial spirits, or sold or sent out, on forfeiture of 100*l.* and seizure.

officer, for such further number of gallons as shall be equal to the number of gallons of water added to and mixed with such spirits in the presence of the officer, in order to reduce the strength thereof to the strength of seventeen per centum under proof."

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6 Geo. 4, c. 80.

Sect. 127. "And the better to prevent the removal of spirits that have been illegally imported, or privately distilled, into the stocks of entered dealers in and retailers of spirits, and of others, be it enacted, that no distiller, rectifier, or compounder of, or dealer in or retailer of spirits, shall be allowed to request or take out more than one permit in one and the same day to any one person whomsoever, except as hereinafter is excepted, and such permit shall be granted for the removal of no more than one cask or other package (not being bottles) containing any spirits of one sort or kind, and if any more than one cask or other package (not being bottles) of spirits of one sort or kind, at any one time directed to one and the same person or persons, where there are two or more in joint trade or partnership, except as hereinafter is excepted, shall be found removed, or carried, or removing or carrying from one place in England to any other place therein, whether with or without permit, the same shall be forfeited and lost, and the person selling or sending out such spirits shall forfeit and lose the sum of 100*l.*, or 20*s.* per gallon, at the election of the commissioners of Excise, or person who shall inform or sue for the same: Provided always, that nothing herein contained shall be construed to prevent any distiller, rectifier, or compounder of or dealer in or retailer of spirits from taking out two or more permits, and by virtue thereof sending two or more casks, or other packages, containing spirits of a different sort or kind, to the same person in the same day, so as each and every such cask or package, respectively, shall be separately and distinctly described in such permit or permits: and also provided, that nothing hereinbefore contained shall be construed to prevent the sending with one and the same permit any number of casks, with any kind of spirits therein, each such cask then containing eighty gallons or upwards of spirits."

No seller of or dealer in spirits to take out more than one permit in one day for the same person, and that only for one cask, except as after excepted, and if more be removed with or without permit, they are forfeited.

Penalty, 100*l.* &c.

Exception for spirits of different kinds separately described, also for any number of casks at one time, each containing 80 gallons or upwards.

Sect. 128. "That no retailer of spirits shall be a distiller, rectifier, or compounder of spirits, or have any part or share in any distillery or rectifying-house, or be in any manner interested or concerned in the trade or business of a distiller, rectifier, or compounder of spirits; and if any such retailer shall be a distiller, rectifier, or compounder of spirits, or shall have any part or share in any distillery or rectifying-house, or be in any manner interested or concerned in the trade or business of a distiller, rectifier, or compounder of spirits, such retailer shall, for every such offence, forfeit and lose the sum of 200*l.*"

Retailer not to be concerned in any distillery or rectifying house, &c. on penalty of 200*l.* (*a*).

Sect. 129. "That no retailer of spirits, not taking out, or having a licence as a dealer in spirits, shall be entitled to request, or shall have any permit granted for the removal of spirits, except to a private person not being a rectifier or compounder, or dealer in or retailer of spirits; and that every retailer, not taking out or having such dealer's licence, who shall sell, send out, or deliver, any spirits to any distiller,

Retailers not having a dealer's licence, not to draw any permit to any seller of spirits.

(*a*) In *Brown and others* v. *Duncan*, 10 *B & C.* 93, 5 *M. & R.* 114, was the following important decision, establishing that a breach of revenue regulations of this nature will not preclude a vendor from recovering the price of goods. A., B., C., D., and E., carried on trade in partnership as distillers, and C. alone carried on the business of a retail dealer in spirits, within two miles of the distillery, contrary to the 4 Geo. IV. c. 94, ss. 132, 133, and his name was not inserted as one of the partners in the distillery in the Excise book or licence, as required by the 6 Geo. IV. c. 81, s. 7: held, these being mere revenue regulations, the breach of them by one of the partners, with the knowledge of the others, did not render the trade carried on by the five so illegal as to deprive them of the right to recover the price of spirits sold by them, or for the breach of a guaranty for the due accounting of an agent, to whom they had consigned the spirits for sale.

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6 Geo. 4, c. 80.

rectifier, or compounder of, or dealer in, or retailer of spirits, shall forfeit the sum of 50*l.*; and all such spirits so sold, sent out, or delivered by such retailer, shall, together with the package containing the same, be forfeited, and shall and may be seized by any officer or officers of Excise, and every permit drawn or granted for that purpose shall be wholly null and void."

No retailer to keep or send out any spirits of wine, or any spirits of any other strength than herein specified.

Sect. 130. "That no retailer of British spirits shall sell, or send out or receive, or have or keep in his or their stock, custody, or possession, any spirits of wine, exceeding at one time ten gallons (*a*), or any plain British spirits, of any strength exceeding the strength of twenty-five per centum above hydrometer proof, or lower than seventeen per centum under hydrometer proof, or any compounded spirits, not being shrub, of greater strength than seventeen per centum under hydrometer proof, or any foreign or colonial spirits (not being compounded colonial spirits) of less strength than seventeen per centum under hydrometer proof, on pain of forfeiting all such spirits as shall be sold, sent out, had, or kept contrary hereto, with the casks or other packages containing the same, which shall and may be seized by any officer or officers of Excise; and no allowance whatever shall be granted to any such retailer for any increase in stock of spirits of wine, or plain British spirits or compounds, by water, sugar, syrup, or fruit; any thing contained in any act or acts of Parliament to the contrary in anywise notwithstanding."

Increase on taking stock to be forfeited, and the retailer shall forfeit 20*s* for every gallon of excess.

Sect. 131. "That every officer of Excise shall, as often and at such times as he may think fit, take an accurate and true account of the quantity of all spirits in the stock, custody, or possession of every retailer of spirits; and if, after making allowance for the spirits for which permits shall have been granted since the last account taken of the stock of such retailer, it shall be found that the quantity of spirits remaining in the stock, custody, or possession of such retailer, shall exceed the quantity for which such retailer shall have credit in the books of the proper officer, whether such credit shall have arisen from what was on hand at the last preceding account taken, or from what may have been lawfully received subsequent thereto, such excess shall be deemed and taken to be spirits illegally received, and a quantity of spirits of the like kind, equal to such excess, shall and may be seized out of any part of the stock of such retailer, by any officer or officers of Excise; and the retailer, in whose stock, custody, or possession such excess shall be found, shall forfeit and lose the sum of 20*s.* per gallon for every gallon of such excess."

Persons, &c. selling, &c. liquors to be unlawfully retailed or consumed, to forfeit 100*l.*

Sect. 132. "That if any person shall knowingly sell or deliver, or cause to be sold or delivered, directly or indirectly, any quantity of spirits to any other person, to the end that the same may be unlawfully retailed or consumed, or carried into consumption in any part of England, such person so offending shall for every such offence, forfeit and lose, over and above all other penalties, the sum of 100*l.*"

Persons having in possession spirits, &c for which duties have not been paid, forfeit same, and treble value.

Sect. 133. "That if any person or persons shall knowingly receive, buy, or have, in his, her, or their custody or possession, any spirits, after the same shall be removed from the place where the same ought to have been charged with the duty payable in respect thereof, or before the duty to which the same shall be liable has been charged and paid, or secured to be paid, or before such spirits have been lawfully condemned as forfeited, the person or persons offending therein, whether he, she, or they had or have, or had or have not, or do or do not claim or pretend to have, any property or interest therein, shall, for every such offence, forfeit and lose all such spirits so received, bought, or had, in his, her, or their custody or possession, and treble the value thereof, according to and at the rate and price which the best spirits of the like kind and strength do or shall bear and sell for in London, at the time when such penalty shall be incurred."

(*a*) This is repealed by the 6 & 7 Will. IV. c. 72, s. 11, *post.*

(15). *Spirituous liquors.*

6 Geo. 4, c 80.

No licence to be granted for retailing spirits within gaols, houses of correction, or workhouses for parish officers, &c., nor shall spirits be used there, &c. except as medicinally prescribed.

Sect. 134. "That no licence shall be granted for the retailing of spirits within any goal, prison, house of correction, or workhouse for any parish poor, and that all licences granted or to be granted contrary to this provision, shall be void, and of no effect; and if any gaoler, keeper, or officer of any gaol, prison, or house of correction, or any governor, master, or officer of any workhouse for any parish poor, shall sell, use, lend, or give away, or knowingly permit or suffer any spirits to be sold, used, lent, or given away in any such gaols, prisons, or houses of correction, or workhouses, or brought into the same, other than and except such spirits as shall be prescribed or given by the prescription and direction of a regular physician, surgeon, or apothecary, and to be applied in pursuance of such prescription from the shop of some regular apothecary, every such gaoler, keeper, governor, master, or other officer, shall for every such offence forfeit and lose the sum of 100*l.*; and in case any such gaoler or other officer, being convicted thereof as aforesaid, shall again offend in like manner, and be thereof a second time lawfully convicted, such second offence shall be deemed a forfeiture of his office."

Justices, upon information that spirituous liquors are kept, &c. in such gaol, &c. may enter, and empower constable to seize same.

Sect. 135. "That it shall and may be lawful for his Majesty's justices of the peace, or any one of them, upon information upon oath that any spirits are kept and disposed of in any such gaol, prison, house of correction, or workhouse for parish poor, to enter and search, or to authorize and empower any constable, headborough, or other peace-officer of the parish where any such places are situated, by warrant under his hand and seal, to enter and search any such gaol, prison, house of correction, or workhouse; and in case any spirits shall be found therein (except such as are directed to be used medicinally as aforesaid), it shall and may be lawful for such constable, headborough, or overseer of the poor, to seize such spirits, and to cause the same to be forthwith staved and destroyed."

Punishing persons conveying, &c. spirituous liquors into workhouses.

Sect. 136. "That no person shall carry or bring, or attempt to endeavour to carry or bring any spirits (except to be used in the way of medicine, as hereinbefore mentioned) into any workhouse for parish poor; and if any person or persons shall offend therein, it shall be lawful for the master or chief officer of such workhouse, or his or their servants, to arrest such person or persons, and to carry him, her, or them before a justice of the peace of the county, division, city, town corporate, or liberty where such workhouse is situate, who is hereby empowered to hear and determine such offence in a summary way, and to administer an oath to the witnesses; and if by the oath of one credible witness or otherwise he shall convict such person or persons of such offence, he shall forthwith commit such offender or offenders to prison, or to the house of correction, there to be kept at hard labour for any time not exceeding three months."

A fair copy of three preceding clauses to be always kept hung up in most public place of such house, &c

Sect. 137. "That every master and chief officer of every workhouse for any parish poor shall procure one or more copy or copies of the three preceding clauses to be printed, or fairly written and hung up in one of the most public places of his workhouse for parish poor, and renew the same from time to time, so that it may be always kept fair and legible, on pain of forfeiting the sum of 10*l.* for every wilful default, to be levied by warrant of any justice of the peace of the county, division, city, town corporate, or liberty, where such gaol, prison, house of correction, or workhouse shall be situate, to be granted on conviction of such default in a summary way before such justice, by the oath of one or more credible witness or witnesses, which oath such justice is hereby empowered to administer; and it shall and may be lawful for every justice of the peace to enter into any gaol, prison, house of correction, or workhouse for parish poor, within the limits of his jurisdiction, and demand a sight of such copy so hung up as aforesaid; and if the same shall not be forthwith shown to him so hung up in some public place, fair and legible as aforesaid, such justice shall and may immediately convict such gaoler,

Justices may enter and demand a sight thereof; and if same be not fair and legible, may convict offender.

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Persons hawking spirits to forfeit them and 100*l.*, and may be convicted by one justice; and if penalty be not paid immediately, committed to house of correction for three months, or until paid.

keeper, master, or officer of such default, and so from time to time, as often as he shall think fit."

Sect. 138. "That no person or persons shall hawk, or shall sell or expose to sale, any spirits, by whatever name or names they are or may be called or distinguished, in or about the streets, highways, or other places, or in or from any boat or other vessel upon the water, or in any other manner or place whatsoever, except in such place as hereinbefore in this act mentioned or allowed, upon pain of forfeiting all such spirits, and the sum of 100*l.* for every such offence; and it shall and may be lawful to and for any one or more justice or justices of the peace for the county, riding, division, city, or liberty respectively wherein such offence shall be committed, on his or their own view, or on the confession of the party, or by the proof on the oath of one or more credible witness or witnesses made of such offence, to convict any person or persons so offending as aforesaid, and such person or persons so offending and convicted shall immediately on such conviction pay the said sum of 100*l.*, or some mitigated amount, not being less than one-fourth part thereof; and on such offender or offenders refusing or neglecting to pay the said sum, the justice or justices so convicting as aforesaid shall and may, by warrant or warrants under his or their hand and seal, or hands and seals, commit the offender or offenders to hard labour in the house of correction for the said county, riding, division, city, or liberty respectively, for the space of three months, to be reckoned from the day of the said commitment; and the person or persons so committed shall not be discharged until he, she, or they shall have paid the said sum of money, or until the full expiration of the said three months."

One or more justice, upon information on oath, may issue warrant to apprehend offenders

Sect. 139. "That it is and shall be lawful for one or more such justice or justices of the peace as aforesaid, on any information upon oath made before him or them against any person or persons, for hawking, or selling, or exposing to sale any spirits contrary to this act, to issue his or their warrant or warrants under his or their respective hands and seals, to be directed to any constable or other ministerial officer of the peace, for the apprehending and bringing such offender or offenders before such justice or justices of the peace, in order to such offender or offenders being by such justice or justices dealt with according to law."

Any person may detain a hawker of spirits, and give notice to a peace officer, who is to carry offender before justice.

Sect. 140. "And whereas, for want of a constable or other ministerial officer of the peace being at hand to apprehend such offender or offenders, he, she, or they has or have often escaped unpunished; be it further enacted, that it shall and may be lawful for any person or persons whomsoever to seize and detain any person or persons who shall hawk or sell, or expose to sale, in manner aforesaid, any spirits, by whatsoever name or names they are or may be called or distinguished, for such reasonable time as he, she, or they may give notice to the constable, headborough, tithingman, churchwarden, overseer of the poor, or some other peace or parish officer or officers, who are hereby required to carry such person so seized and detained before some one of his Majeesty's justices of the peace for the county or place where such offence or offences shall be committed; which said justice of the peace is hereby required to proceed to the examination of such person so seized and brought before him for such offence, in the same manner as if such person so seized had been apprehended and brought before him by a constable or any other ministerial officer of the peace under such warrant as aforesaid."

Either of offending parties informing against the other, shall be acquitted of his own penalty.

Sect. 141. "And for the more effectual discovery of offenders, be it further enacted, that on the commission of any offence under this act, either of the offending parties who shall first discover and inform against the other or others of such offending parties, before any information has been lodged against such informing party for such offence, shall, upon conviction of the person or persons against whom such information shall be given, be discharged and acquitted from all penalties to which at the time of such information given such informing party may be liable, for

or by reason of any such offence committed by such informing party; and that the evidence of such informing party shall, on any trial at law touching such offence, be admitted to prove the facts thereof or relating thereto."

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

Informers may be rewarded by commissioners, not exceeding 50*l.*, if penalty is not paid and cannot be levied, or if offender shall be sent to prison.

Sect. 142. "And for the encouragement of those who shall discover offences committed against this act, be it enacted, that where any person or persons shall be lawfully convicted of any offence against any of the provisions of this act, and the pecuniary penalty imposed for such offence shall not be paid, and cannot be levied, or the person incurring any such penalty is not able to pay the same, but in lieu thereof is sent to prison, it shall and may be lawful for the commissioners of Excise to cause such reward as they shall think fit, not exceeding 50*l.* in each case, to be paid to the several and respective persons who shall appear to them to be entitled thereto as informers, out of any monies in their hands arising by any penalties or forfeitures under the Excise laws."

Armed persons opposing the law, or violently rescuing offenders, or assaulting officers, informers, or witnesses, guilty of felony, and to be transported for seven years.

Sect. 143. "That if any person or persons shall, armed with a gun, pistol, sword, or pike, or in a violent manner with staves or stones, rescue any offender arrested, or any goods or chattels seized under this act, or shall prevent such arrest of seizure, or shall assault, beat, or wound any officer or officers, or other person or persons acting in his or their aid or assistance, or any person or persons who shall have given or be about to give any information against, or shall have discovered or given evidence against, or be about to discover or give evidence against, or shall seize or bring to justice any person or persons offending against this act, or who shall have seized or be about to seize or examine any goods or chattels forfeited under this act, or shall forcibly oppose the execution of any of the powers given by this act, or who, being so armed, or with such violence as aforesaid, shall offer or threaten so to do, then all and every person or persons so offending, and their aiders and abetters thereof lawfully convicted, shall be and be adjudged to be guilty of felony; and every such felon shall be subject and liable to the like pains and penalties as in cases of felony, and the courts by and before whom he, she, or they shall be convicted, shall have full power and authority of transporting such felon and felons for the space of seven years, in like manner as other felons are directed to be transported by the laws and statutes of this realm."

Constable not executing act, on conviction before justice to forfeit 20*l.*

Sect. 144. "That if any constable or other ministerial officer of the peace whatsoever shall refuse or neglect, upon due notice or request, or on his own view, to be aiding and assisting, or to proceed as aforesaid in the execution of this act, such constable or other ministerial officer of the peace, being thereof convicted by the oath of one or more credible witness or witnesses, before any justice of the peace for the county or place where such offence shall be committed, shall forfeit for every such offence the sum of 20*l.*"

Officer employed in the Excise taking any reward from, or entering into any collusive agreement with any person to act contrary to his duty, to forfeit 500*l.* and be incapacitated; and the person offering such reward, or proposing such agreement, to forfeit 500*l.*

Sect. 145. "That if any officer of Excise, or person employed in the collection or management of or accounting for or securing the revenue of Excise on spirits, shall directly or indirectly ask or demand, or take or receive any sum of money or other recompense or reward whatsoever, or any security for any sum of money, or other recompense or reward, or acquiesce in or make or enter into any collusive agreement with any person or persons to do, conceal, or connive at any act or thing whereby any of the provisions of this or any other act of Parliament relating to his Majesty's revenue of Excise on spirits shall or may be evaded or broken, or his said revenue defrauded, or to do or perform, or permit or suffer to be done or performed, any act or thing whatsoever contrary to the duty of such officer or person so employed as aforesaid, or to neglect or omit to do or perform any act or thing whatsoever belonging or appertaining to the business or duty of such officer or person so employed as aforesaid, every such officer or person so employed, offending as aforesaid, shall, for each and every such offence, forfeit the sum of 500*l.*; and

(1b). *Spirituous liquors.*

6 Geo. 4, c. 80.

being thereof duly convicted, shall be incapable of thereafter serving his Majesty in any office or employment whatsoever; and every person who shall directly or indirectly give or offer, or promise to give, to any officer or person so employed as aforesaid, any sum of money or other recompense or reward whatsoever, or any security for any sum of money, recompense, or reward whatsoever, or shall propose, make, or enter into any collusive agreement with any officer or person so employed as aforesaid, in order to corrupt and prevail upon such officer or person as last aforesaid, to do, conceal, or connive at any act or thing, whereby any of the provisions of this or any other act of Parliament relating to his Majesty's revenue of Excise on spirits shall or may be evaded or broken, or his said revenue defrauded, or to do or perform, or permit or suffer to be done or performed, any act or thing whatsoever, contrary to the duty of such officer or person so employed as aforesaid, or to neglect or omit to do or perform any act or thing whatsoever, belonging or appertaining to the business or duty of such officer or person so employed as aforesaid, shall, for each and every such offence, whether such sum of money or other reward or promise of, or security for the same, or such agreement, be received, accepted, entered into, or performed or not, forfeit and lose the sum of 500*l.*: Provided always, that in case any such officer or person so employed as aforesaid, who shall have directly or indirectly asked or demanded, or taken or received, any such sum of money, or other recompense or reward, or any promise of, or security for the same, or acquiesced in, made, or entered into any such collusive agreement, shall, before any complaint shall have been made, or any proceedings had against him for having committed any such offence or offences as aforesaid, give information of the gift, offer, or promise to give such sum of money or other recompense or reward or security for the same, or of such collusive agreement proposed, or made, or entered into, and proceedings shall thereon be thought fit to be instituted, so that such penalty as aforesaid shall be recovered against the person who shall have directly or indirectly given or offered, or promised to give, any such sum of money or other recompense or reward or security for the same, or shall have proposed, made, or entered into any such collusive agreement; or in case the person who shall have directly or indirectly given or offered, or promised to give, any such sum of money or other recompense or reward or security for the same, or shall have proposed, or made, or entered into, any such collusive agreement, shall, before any complaint shall have been made, or any proceedings had against him or her for having committed any such offence or offences, give information of the asking or demanding, or of the taking or receiving of any such sum of money or other recompense or reward, or promise of security for the same, or of such collusive agreement acquiesced in, made, or entered into by any officer or person so employed as aforesaid, and proceedings shall thereon be thought fit to be instituted, so that such penalty as aforesaid shall be recovered against such officer or person so employed and offending as aforesaid; then and in either of the said cases either of the said parties so first giving such information shall be exempted from and indemnified against the penalties and disabilities imposed on such party for such offence or offences by this act."

Penalty for obstructing officers in cases not otherwise provided for, 200*l.*

Sect. 146. "That if any distiller, rectifier, or compounder of spirits, or any dealer in or retailer of spirits, or any workman or servant belonging to, or employed or authorized by such distiller, rectifier, or compounder, dealer, or retailer, or if any other person or persons shall molest, hinder, oppose, or obstruct any officer or officers of Excise, or any person or persons acting in his or their aid or assistance, in the due execution of the powers and authorities by this act granted, or any of them, every such distiller, rectifier, or compounder, dealer or retailer, or other person or persons so offending, shall, for every such offence, forfeit and lose the sum of 200*l.*"

(15). *Spirituous liquors.*

6 Geo 4, c. 80.

Sect. 147. "That the gallon in this act mentioned shall, for all the purposes of this act, be deemed and taken to be a gallon, imperial standard gallon measure."

The imperial gallon shall be applied to this act.

Sect. 148. "And in order to secure the duties of Excise granted and imposed by this act, from time to time due and owing and in arrear, from any distiller or distillers, and for the enforcement of any penalty or penalties incurred by any distiller or distillers, for any offence or offences by him or them committed against this or any other law or laws of Excise relating to spirits; be it further enacted, that all worts, wash, low wines, feints, and spirits, and all materials, preparations, utensils, and vessels for the making thereof, in the custody or possession of such distiller and distillers, or in the custody or possession of any person or persons to the use of, or in trust for him, her, or them, or into whose hands soever the same shall come, and by what conveyance or title soever the same shall be claimed, shall be subject and liable to, and the same are hereby made chargeable with, all the duties of Excise in arrear and owing from time to time, from or by such distiller or distillers; and shall also be subject and liable to all penalties and forfeitures incurred by such distiller or distillers, for any offence or offences by him, her, or them committed against this or any other law or laws of Excise relating to spirits; and it shall and may be lawful, in all such cases, to levy thereupon such duties, penalties, and forfeitures, and use such proceedings for the recovery or enforcement thereof, as might lawfully be done, in case the debtors or offenders were the true and lawful owners of such worts, wash, low wines, feints, and spirits, materials, preparations, utensils, and vessels: Provided always, that when the same shall come into the hands and possession of any third person or persons, by any *bonâ fide* sale and delivery made before any such duties have been charged or become chargeable upon, or any such penalties or forfeitures have been incurred by the distiller or distillers by whom the same respectively shall have been so sold and delivered as aforesaid, no such worts, wash, low wines, feints, or spirits, materials, preparations, vessels, or utensils, shall be subject or liable to, or be made chargeable with, such duties, penalties, or forfeitures, as hereinbefore mentioned."

All spirits, materials, utensils, and vessels of distiller, subject to arrears of duty, penalties, and forfeitures.

Recovery and application of penalties.

Sect. 149. "That all fines, penalties, and forfeitures imposed by this act, shall be sued for, recovered, levied, or mitigated, by such ways, means, or methods, as any fine, penalty or forfeiture may be sued for, recovered, levied, or mitigated, by any law or laws of Excise; and that one moiety of every such fine, penalty, or forfeiture, shall be to his Majesty, his heirs, and successors, and the other moiety to him or them who shall discover, inform, or sue for the same: provided, that no such mitigation shall in any case reduce any penalty imposed by this act, for any offence of which any person or persons shall be convicted, to less than one-fourth part of such penalty, over and above reasonable costs, charges, and expenses, incurred by the prosecution."

Powers of 12 Car. II. c. 24, or any law now in force relating to Excise, extended to this act.

Sect. 150. "That all and every the powers, directions, rules, penalties, forfeitures, clauses, matters, and things, which in and by an act made in the parliament of England, in the twelfth year of the reign of King Charles the Second, intituled, '*An Act for taking away the Court of Wards and Liveries, and Tenures* in capite, *and by Knight's Service and Purveyance, and for settling a Revenue upon his Majesty in lieu thereof,*' or by any other law in force in England, relating to his Majesty's revenue of Excise, are provided and established, shall be (except so far as any of them may be altered by this act) practised, used, and put in execution, in and for the purposes of this act, as fully and effectually, to all intents and purposes, as if all and every the said powers, rules, directions, penalties, forfeitures, clauses, matters, and things, were particularly repeated and re-enacted in this act."

Extent and commencement of act.

Sect. 151. "That this act shall, except where otherwise mentioned, extend to England only, and so far as relates to licences, and to the making and distilling, and warehousing and removal, of spirits under the pro-

(15). *Spirituous liquors.*

6 Geo. 4, c. 80.

visions contained in and chargeable with the duties imposed by this act, shall commence and take effect from the 10th day of October, 1825; and so far as relates to the sale, delivery, and removal of spirits, and the payment of the duties upon spirits hereby imposed, and other parts of this act (except as aforesaid), shall commence and take effect from the 5th day of January, 1826; and that all spirits made and distilled in England, or brought into England from Scotland or Ireland, under the provisions of this act, after the 10th day of October, 1825, and before the 6th day of January, 1826, and which shall during such period be found removing or removed from any part of England to any other part thereof, except only for the purpose of being warehoused under the provisions of this act, shall be forfeited, and shall and may be seized by any officer or officers of Excise; and the distiller or other person removing or concerned in the removal or receipt of any such spirits, shall, upon conviction of such offence, forfeit his or her licence, and no new Excise licence shall be granted to such distiller or other person so convicted for the remainder of the current year of the licence so forfeited: Provided always, that all and singular the law and laws of Excise in force in England at the time of passing this act, shall remain and continue in force until the 6th day of January, 1826, for rectifying, compounding, selling, delivering, and removing spirits made and distilled in England, or brought into England from Scotland or Ireland for consumption in England, and in respect whereof the duties respectively hereby repealed, are paid; any thing herein contained to the contrary thereof notwithstanding."

Spirits made or brought from Scotland or Ireland into England, between the 10th October, 1825, and the 6th January, 1826, to be warehoused, and duty to be paid on the latter day, except for so much as shall by notice be continued in warehouse for exportation only.

Sect. 152. "That from and after the said 10th day of October, 1825, it shall and may be lawful to and for any distiller in England, and for any proprietor of any British spirits distilled in Scotland or Ireland, and brought into England, according to the provisions of this act, to warehouse, and every such distiller and proprietor respectively is hereby required forthwith to warehouse, under the provisions of this act, the whole of the British spirits which any such distiller shall, between the said 10th day of October, 1825, and 6th day of January, 1826, distil or make, or any such proprietor shall bring into or receive in England from Scotland or Ireland as aforesaid, and to continue all such spirits so warehoused until the said 6th day of January, 1826; and that on the said 6th day of January, 1826, every such distiller and proprietor respectively shall pay to the commissioners of Excise, or such person or persons as they shall employ to receive the same, all the duties respectively by this act imposed, charged or chargeable upon such distiller or proprietor for or in respect of such spirits so warehoused, and of all deficiencies thereof, or of so much of such spirits as shall not, by notice on that day to be delivered by such distiller or proprietor to the proper officer, be desired by him or her respectively to be continued in warehouse for exportation only to foreign parts, and all such spirits then in any such warehouse for which such duty shall be so paid shall thereupon be delivered from such warehouse: Provided always, that no spirits so warehoused for which such duty respectively shall not be so paid on the said 6th day of January, 1826, and which shall be so desired to be continued in warehouse, shall be on any pretence whatever afterwards delivered from such warehouse, except for such exportation only; and that all spirits for which the duty respectively shall not be so paid as aforesaid, and which shall not be desired by such notice as aforesaid to be continued in the warehouse for such exportation only as aforesaid, shall be forfeited, and shall and may be seized by any officer or officers of Excise."

Sect. 153. This act may be amended, altered, or repealed in this session.

9 Geo. 4, c. 44.

The 9 Geo. IV. c. 44, s. 4, extends all acts in force in England relating to foreign and colonial spirits &c. to the United Kingdom.

11 Geo. 4 & 1 Will. 4, c. 49 Additional duties

By the 1 Will. IV. c. 49, intituled, "*An Act to impose additional Duties of Excise on Spirits,*" after reciting, "Whereas it is expedient to im-

(15). *Spirituous liquors.*

1 Will. 4, c. 49. of Excise on spirits (a).

pose certain additional duties of Excise on spirits," it is enacted, "that there shall be raised, levied, collected, and paid to and for the use of his Majesty, his heirs and successors, over and above all duties already imposed for or in respect thereof by any act or acts, the several additional duties of Excise hereinafter mentioned (that is to say):

"From and after the 15th day of March, 1830, for and upon every gallon of spirits of the strength of hydrometer proof, ascertained by the hydrometer called *Sikes'* Hydrometer, which shall be made or distilled in England by any person or persons whomsoever, an additional duty of sixpence, and so in proportion for any greater or less degree of strength, or for any greater or less quantity, to be paid by the first maker or distiller thereof.

"For and upon every gallon of spirits of such strength as aforesaid, which shall have been or shall be made and extracted in Scotland or Ireland respectively, and warehoused there without payment of duty, and which shall have been or shall be taken out of warehouse there for the purpose of being removed or imported into England for consumption, an additional duty of sixpence, and so in proportion for any greater or less degree of strength, or any greater or less quantity, to be paid by the distiller or proprietor thereof at the time of the delivery of such spirits from the warehouse in Scotland or Ireland respectively, for the purpose of being brought or imported into England.

"For and upon every gallon of spirits of such strength as aforesaid, which shall be in the stock, custody, or possession of any distiller in England on the 16th day of March, 1830, an additional duty of sixpence, and so in proportion for any greater or less degree of strength, or any greater or less quantity, to be paid by such distiller.

"For and upon every gallon of spirits of such strength as aforesaid, which shall be made or distilled in Scotland or Ireland respectively, or which shall have been made or distilled in Scotland or Ireland respectively, and shall be or shall have been on the 16th day of March, 1830, in the stock, custody, or possession of any distiller in Scotland or Ireland, or shall have been warehoused there without payment of duty, and which shall be taken out of such warehouse for consumption in Scotland or Ireland respectively, an additional duty of twopence, and so in proportion for any greater or less degree of strength, or any greater or less quantity.

"From and after the 14th day of June, 1830, for and upon every gallon of spirits of such strength as aforesaid which shall be made or distilled in Scotland or Ireland respectively, or which shall have been made or distilled in Scotland or Ireland respectively, and shall be or shall have been, on the 15th day of June, 1830, in the stock, custody, or possession of any distiller in Scotland or Ireland, or shall have been warehoused there without payment of duty, and which shall be taken out of such warehouse for consumption in Scotland or Ireland respectively, a further additional duty of fourpence, over and above the said additional duty of twopence, and so in proportion for any greater or less degree of strength, or any greater or less quantity (a)."

Spirits made in Scotland or Ireland, and removed to England, but not sold on 16th March, 1830, to be liable to duty hereby imposed.

Sect. 2. "That all spirits which shall have been made or distilled in Scotland or Ireland respectively, and removed from thence into England, and which shall not, on the 16th day of March, 1830, have been sold or disposed of, or, if sold and disposed of, shall not have been delivered to the purchaser thereof, and removed from the legal quays or sufferance wharfs, or other place of landing, and the duties whereon shall not have been fully paid and satisfied, shall be liable to the said additional duty of sixpence hereby imposed; and the same shall be paid by the proprietor of such spirits, or the person in whose custody or possession the same shall, on the 16th day of March, 1830, or at any time afterwards, be found."

As to spirits made in Scotland or Ireland, and sold, but not delivered at periods herein mentioned.

Sect. 3. "That all spirits which shall have been made and distilled and warehoused in Scotland and Ireland respectively, and which shall, before the 16th day of March, or 15th day of June, 1830, respectively, have been sold and disposed of by the distiller thereof, but shall not have been delivered to the purchaser, but have remained and been taken

(a) For the present amount of duties payable, see *ante*, p. 644.

(15). *Spirituous liquors.*

1 Will. 4, c. 49.

an account of in any warehouse, shall be, and the same are hereby declared to be, liable to the said additional duties of twopence and fourpence for every gallon thereof respectively hereby imposed; and the commissioners, collectors, and officers of Excise are hereby authorized and required to demand and receive the said additional duties before the delivery of any such spirits from the warehouse in which the same shall have been or shall be warehoused; and in case any such spirits which shall have been so warehoused shall, after the said 15th day of March, or 15th day of June, 1830, respectively, have been delivered from the warehouse, it shall and may be lawful for the commissioners of Excise, and they are hereby authorized and empowered, to collect, recover, and receive the said additional duties hereby imposed from the distiller or proprietor of such spirits, by the same ways, means, powers, and authorities as any other duties of Excise may by any act or acts be collected, recovered, and received; and if any distiller or proprietor of any such spirits shall have been or shall be charged with, and shall have paid or shall pay, the said additional duties, or any part thereof, it shall and may be lawful for such distiller or proprietor to recover the amount so paid from the purchaser of the spirits, in respect of which such distiller or proprietor shall have been or shall be charged, and shall have paid or shall pay the said additional duties."

Additional duties to be under management of commissioners of Excise.

Sect. 4. "That the said additional duties hereby imposed shall be under the management of the commissioners of Excise for the time being, and the same shall and may be respectively raised, levied, collected, recovered, paid, and applied, in such and the like manner, and in or by the same means, ways, or methods by which the former duties of Excise for or in respect of spirits were or might be raised, levied, collected, recovered, paid, and applied, in England, Scotland, and Ireland respectively; and all and every act or acts relating to the duties of Excise, and all and every fine, penalty, or forfeiture, of any nature or kind whatsoever, for any offence against or in breach of any act or acts for securing the duties of Excise, or any of them, or for the regulation or improvement thereof, in force immediately before the passing of this act, and the several clauses, powers, and directions therein contained, shall and the same respectively are hereby directed and declared to extend to, and shall be respectively applied, practised, and put in execution, for and in respect of the several additional duties of Excise by this act imposed, in as full and ample manner, to all intents and purposes whatsoever, as if all and every the said acts, clauses, provisions, powers, directions, fines, penalties, or forfeitures, were particularly repeated and re-enacted in the body of this act."

Remedy for contracts.

Sect. 5. "And whereas contracts may have been made before the 16th day of March, 1830, or before the said 15th day of June, 1830, respectively, by licensed distillers and makers of spirits, and other persons, for spirits to be delivered after those days on which the additional duties hereby imposed will attach;" be it enacted, "that all and every such licensed distillers and makers of spirits, and other persons, who shall have sold any such spirits before the 16th day of March, or 15th day of June, 1830, on which the additional duties hereby imposed shall be charged, shall be allowed to add such money as will be equivalent to the additional duties by this act imposed for or in respect of such spirits to the price thereof, and shall be entitled by virtue of this act to demand, recover, and be paid the same accordingly; or it shall be at the option of any such distiller or maker of spirits, or other person, having entered into any such contract for the delivery of spirits, or of the purchaser thereof, before the delivery and receipt of such spirits, to declare the contract null and void, and the same shall be and is hereby made null and void accordingly."

All spirits on which additional duties are hereby imposed made liable, and

Sect. 6. "That all spirits on which the said additional duties are hereby imposed, and all spirits which, on the 16th day of March and 15th day of June, 1830, respectively, or at any time afterwards, shall

be or be found in the stock, custody, or possession of any distiller or other person liable to the payment of any of the said additional duties hereby imposed, or in the custody or possession of any other person or persons in trust for or to the use of any such distiller or other person or persons so liable, shall and the same are hereby made subject and liable to the payment of so much of the said additional duties, or any arrear thereof, as they may be respectively liable to under the provisions of this act, and shall and may be seized, taken, and sold for the payment thereof, under the powers or authorities given by any act or acts for the recovery and enforcing the payment of any duties of Excise."

(15). *Spirituous liquors.*

1 Will. 4, c. 49.

may be seized and sold for default.

Sect. 7. "That this act may be amended, altered, or repealed by any act or acts to be passed in this present session of Parliament."

Act may be altered this session.

By 2 & 3 Will. IV. c. 74, intituled "*An Act to permit the Distillation of Spirits from Mangel-worzel,*" sect. 1 enacts, that licensed distillers may distil spirits from mangel-worzel only.

2 & 3 Will. 4, c. 74, distilling from mangel-worzel.

The 6 & 7 Will. IV. c. 72, intituled "*An Act to impose countervailing Duties of Excise on Mixtures, Compounds, Preparations, and Commodities made from or with Spirits removed from Ireland to England or Scotland, or from Scotland to England, and to grant countervailing Drawbacks on the removal of the same; to repeal the additional Duties of Excise on Licences to Retailers of Spirits in the United Kingdom; and to alter the Laws relating to Distillers and Retailers of Spirits,*" (13th August, 1836), after reciting that the duties by law charged and payable on spirits made or distilled in the respective parts of the United Kingdom are, for every gallon of spirits of the strength of hydrometer proof made or distilled in England, seven shillings and sixpence; for every gallon of such spirits made or distilled in Scotland, three shillings and four-pence; and for every gallon of such spirits made or distilled in Ireland, two shillings and four-pence: and that such differences in the respective amounts of the said duties operate unfairly and unjustly on the manufactures of all mixtures, compounds, and preparations into the manufacture of which spirits enter as the basis, or a principal ingredient or material thereof, and injuriously to the revenue when such articles are manufactured in and removed from that part of the United Kingdom paying the lower duty into those parts of the United Kingdom in which the higher duties are charged and paid, and also further operate as prohibitions to the removal of such articles from those parts of the United Kingdom paying the higher duty to the parts in which the Excise duties are chargeable: and that by the respective acts of union between England and Scotland and Great Britain and Ireland it is intended that all the subjects of the United Kingdom should as far as possible be placed on an equality in respect of trade and manufactures, and it is therefore necessary and expedient, in conformity with such intention, that countervailing duties should be imposed on the removal from Ireland to England or Scotland, or from Scotland to England, of the respective mixtures, compounds, preparations, and commodities in the schedule to this act mentioned, according to the quantity of proof spirit usually employed in the manufacturing and compounding of the same, and that corresponding drawbacks should be allowed: and that by an act passed in the fourth and fifth years of his Majesty's reign, intituled "An Act to repeal the Duties on Spirits made in Ireland, and to impose other Duties in lieu thereof, and to impose additional Duties on Licences to Retailers of Spirits in the United Kingdom," certain additional duties of Excise were imposed on Excise licences taken out by retailers of spirits in Great Britain and Ireland: and that it is expedient to repeal the said additional duties: and that it is expedient to allow spirits made or distilled in the United Kingdom to be warehoused in casks of a lesser size than eighty gallons, and to remove the restriction on retailers of spirits not to have more than ten gallons of spirits of wine in stock, and to repeal so much of an act passed in the second year of his Majesty's reign, intituled "An Act to reduce the Allowance on Spirits made from Malt

6 & 7 Will. 4, c 72.

4 & 5 Will. 4, c. 75.

2 Will 4, c. 29.

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6 & 7 Will. 4, c. 72.

Countervailing duties set forth in the schedule to be charged on articles enumerated therein when removed from Ireland to Scotland or England, or from Scotland to England, and drawbacks to be allowed on removal of the same.

only in Scotland and Ireland," as prevents any distiller in Scotland and Ireland from giving notice to distil from malt during the remainder of his licence, after having distilled from raw grain, and to restore the provision contained in an act passed in the fourth year of the reign of his Majesty King George the Fourth: enacts, "That from and after the first day of September one thousand eight hundred and thirty-six there shall be raised, levied, collected, and paid unto his Majesty, his heirs and successors, upon the several mixtures, compounds, preparations, and commodities mentioned and described in the schedule to this act annexed, on the removal of the same from Ireland to Scotland or England, or from Scotland to England respectively, the several sums of money and duties of Excise as they are respectively inserted, described, and set forth in the said schedule; and that there shall be allowed and paid, on the removal of such mixtures, compounds, preparations, and commodities from England to Scotland or Ireland, or from Scotland to Ireland, the several drawbacks of Excise also respectively inserted, described, and set forth in the said schedule" (*a*).

Sect. 2. Duties and drawbacks to be under the management of the commissioners of Excise.

Persons intending to remove any of articles enumerated to give notice of intention and obtain permit.

Sect. 3. "That every person who shall intend to ship any of the said mixtures, compounds, or preparations, or commodities, for removal from Ireland to Scotland or England, or from Scotland to England, or from England to Scotland or Ireland, or from Scotland to Ireland (*b*) respectively, shall, twelve hours before shipping the same, give notice in writing of such his intention to the collector of Excise or other proper officer of Excise appointed to receive the same at the port of shipment, setting forth and specifying in such notice the number of casks or packages, or vessels or utensils, intended to be so removed, and also the mark and number on each such cask, package, vessel, or utensil, and the quantity and description of the mixtures, compounds, preparations, or commodities contained in each, and the name of the vessel and the master thereof by which and the name of the port or place to which the same are to be removed, and the name of the person or persons at such last-mentioned port or place to whom such mixtures, compounds, preparations, or commodities are to be sent; and such persons shall also, at the foot or on the back of every such notice as aforesaid, request that a permit may be granted for the removal of such mixtures, compounds, preparations, or commodities, in conformity with the particulars thereof set forth and specified in such notice; and the collector or officer of Excise to whom such notice shall be given shall on the receipt thereof be authorized to examine or cause to be examined every such cask, package, vessel, and utensil, and the marks and numbers and contents thereof, and ascertain the truth of the particulars in such notice, and being satisfied thereof shall grant or cause to be granted a permit for the removal of such mixtures, compounds, preparations, or commodities, expressing in such permit, or by indorsement thereof, the several particulars aforesaid, of the number of casks, packages, vessels, or utensils, and the marks and numbers thereof, and the quantity and description of the mixtures, compounds, preparations, or commodities contained in each, with the names of the persons shipping the same and to whom the same are to be sent, and of the vessel and the master thereof by which and of the port and place from which and the port or place to which such mixtures, compounds, preparations, or commodities are to be removed; and the collector or other officer granting such permit shall forthwith transmit by post a duplicate thereof to the collector or other principal officer of Excise at the port or place, or nearest thereto, to which such mixtures, compounds, preparations, or commodities are to be removed; and if any such mixtures, compounds, preparations, or

(*a*) *Vide post*, the 5 Vict. sess. 2, c. 25, which repeals the above.
(*b*) *Vide ib.* s. 3.

commodities shall be found on board any ship or vessel in Ireland bound for England or Scotland, or on board any ship or vessel in Scotland bound for England, without such notice of shipment having been given, or not accompanied with such permit as aforesaid, the same shall be forfeited, and may be seized by any officer of Excise or Customs, and the person who shall have shipped or cause to be shipped such mixtures, compounds, preparations, or commodities shall forfeit two hundred pounds."

(15). *Spirituous liquors.*

6 & 7 Will. 4, c. 72.

Sect. 4. "That the proprietor or consignee of any such mixtures, compounds, preparations, or commodities removed from Ireland into England or Scotland, or from Scotland into England, shall, on the arrival of the ship or vessel at the port or place into which the same shall be brought, make due entry with the collector or other officer of Excise appointed to receive the same at such port or place of such mixtures, compounds, preparations, or commodities on board such ship or vessel, and shall deliver to such collector or other officer the permit for the removal of the same, and shall pay to such collector or other officer the duties due and payable on such mixtures, compounds, preparations, or commodities, according to the provisions of this act; and such collector or other officer, having examined or caused to be examined the said mixtures, compounds, preparations, or commodities, and being satisfied that they are the same casks, packages, vessels, or utensils, mixtures, compounds, preparations, or commodities specified in the permit, and having received the duties payable thereon, shall deliver the same to the proprietor, consignee, or agent making such entry and producing such permit as aforesaid; and if any of the said mixtures, compounds, preparations, or commodities shall be removed from Ireland to Scotland or England, or from Scotland to England, without being accompanied with such permit as aforesaid, or if within twenty-four hours after the arrival of any ship or vessel due entry of any such mixtures, compounds, preparations, or commodities on board thereof shall not be made, and the permit for the removal thereof produced, or if any such mixtures shall be removed from the quay, wharf, or place where landed before the duties thereon shall be duly paid, all such mixtures, compounds, preparations, and commodities shall be forfeited, and may be seized by any officer of Excise or Customs; and every person who shall remove or aid or assist in removing any such mixtures, compounds, preparations, or commodities from Ireland into Scotland or England, or from Scotland into England, without such permit as aforesaid, or who shall remove any such mixtures, compounds, preparations, or commodities from the quay, wharf, or place where landed before the duties thereon shall have been paid, shall forfeit two hundred pounds."

On arrival of vessel in England or Scotland, entry to be made with collector or other officer of Excise of articles on board, and permit to be produced and duty paid

Sect. 5. "That the proprietor or consignee of any such mixtures, compounds, preparations, or commodities removed from England into Scotland or Ireland, or from Scotland into Ireland, on drawback, shall, on the arrival of the ship or vessel at the port or place into which the same shall be brought, make due entry with the collector of Excise or other officer of Excise appointed to receive the same at such port or place of such mixtures, compounds, preparations, or commodities on board such ship or vessel, and shall deliver to such collector or other officer the permit for the removal of the same; and such mixtures, compounds, preparations, or commodities, having been duly landed, and examined by such collector or other officer, or by his directions, and such collector or officer being satisfied that they are the same casks, packages, vessels, or utensils, mixtures, compounds, preparations, or commodities specified in the permit, shall give a debenture or certificate to the proprietor or consignee of the said mixtures, compounds, preparations, or commodities, making such entry and producing such permit, for the amount of drawback payable according to the provisions of this act on the quantity of such mixtures, compounds, preparations, or commodities so brought into Scotland or Ireland respectively."

Entry to be made of articles removed from England to Scotland or Ireland, or from Scotland to Ireland, and permit produced to obtain drawback.

(15). *Spirituous liquors.*

6 & 7 Will. 4, c. 72.

Customs regulations to apply to these articles.

Sect. 6. "That all the enactments, provisions, rules, and regulations, fines, penalties, and forfeitures, relating to goods subject to duties and drawbacks of Excise removed from Ireland to England or Scotland, or from Scotland to England, from England to Scotland or Ireland, or from Scotland to Ireland, contained in any act or acts relating to the revenues of Customs, shall extend to and be in force in respect of the removal of the said mixtures, compounds, preparations, and commodities."

Regulations as to drawbacks.

Sect. 7. "That no drawback under this act shall be claimed or allowed on any ether which shall be removed from England to Scotland or Ireland, or from Scotland to Ireland, of a greater specific gravity than seven hundred and fifty; nor shall any sweet spirits of nitre be removed from Ireland to England or Scotland, or from Scotland to England, of a less specific gravity than eight hundred and fifty; nor shall any such spirits of nitre be removed from England to Scotland or Ireland, or from Scotland to Ireland, on drawback, of a greater specific gravity than eight hundred and fifty; water being taken for the purpose of such specific gravities at one thousand at the temperature of sixty degrees by Fahrenheit's thermometer; and none of the tinctures and medicated spirits not particularly denominated in the schedule to this act, but to be charged at the respective duties and allowed the respective drawbacks of four shillings and twopence, five shillings and twopence, and one shilling for each gallon thereof, shall be removed from Ireland into England or Scotland, or from Scotland into England, which shall contain more, nor shall any such tinctures and medicated spirits, when removed from England to Scotland or Ireland, or from Scotland to Ireland, on drawback, contain less than in the proportion of one gallon of proof spirit in every gallon thereof; and none other of the said mixtures, compounds, preparations, and commodities in the said schedule enumerated shall, when so removed as aforesaid, contain more, when removed from Ireland to England or Scotland, or from Scotland to England, or less when removed on drawback, than in the proportion of one gallon and a half of proof spirit for every gallon thereof; all ether, spirits of nitre, and all such tinctures and medicated spirits, mixtures, compounds, preparations, and commodities which shall be so removed contrary to the directions aforesaid, shall be forfeited, and may be seized by any officer of Excise or Customs; and any drawback claimed thereon respectively shall also be forfeited."

Articles not to be removed to or from Scotland otherwise than by sea.

Sect. 8. "That none of the said mixtures, compounds, preparations, or commodities shall be removed from England to Scotland, nor from Scotland to England, otherwise than by sea, on pain of the forfeiture thereof, and two hundred pounds by the person removing the same."

Duties imposed by 4 & 5 Will. 4, c. 75, on licences to retailers of spirits repealed (a).

Sect. 9. "That from and after the 10th day of October one thousand eight hundred and thirty-six the said additional duties of Excise on Excise licences taken out by retailers of spirits imposed by the said recited act of the fourth and fifth years of his Majesty's reign shall be and the same are hereby repealed."

Distillers may warehouse spirits in casks containing not less than 20 gallons.

Sect. 10. "That it shall be lawful for any distiller of spirits in England, Scotland, or Ireland to warehouse any spirits distilled in the distillery of such distiller, in casks, which shall contain not less than twenty gallons each, subject to and under in all other respects the rules, regulations, enactments, fines, penalties, and forfeitures in force in England, Scotland, and Ireland respectively relating to the distilling, warehousing, and removal of such spirits."

So much of 6 Geo. 4, c. 80, as prohibits retailers of spirits from having more than ten gallons of spirits of wine in stock repealed (a).

Sect. 11. "That so much of an act passed in the sixth year of the reign of his Majesty King George the Fourth, intituled 'An Act to repeal the Duties payable in respect of Spirits distilled in England, and of

(a) See *ante*, the 6 Geo. IV. c. 80, s. 130, intituled, "An Act to repeal the Duties on Spirits made in Ireland, and to impose other Duties in lieu thereof; and to impose additional Duties on Licences to Retailers of Spirits in the United Kingdom."

Licences for distilling, rectifying, or compounding such Spirits, and for the Sale of Spirits, and to impose other Duties in lieu thereof, and to provide other Regulations for the Collection of the said Duties, and for the Sale of Spirits, and for the warehousing of such Spirits without Payment of Duty for Exportation,' as prohibits retailers of British spirits from selling or sending out, or receiving, or having or keeping in their stock, custody, or possession, any spirits of wine exceeding at one time ten gallons, shall be and the same is hereby repealed; and in lieu thereof it shall be lawful for any retailer of spirits to sell or send out, receive, or have in his stock, custody, or possession, any quantity of spirits of wine, under the same rules and regulations and subject to the same penalties and forfeitures as are in and by the said act prescribed and imposed in respect to spirits of wine sold or sent out or received by or kept in the stock or possession of a dealer in spirits."

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Sect. 12. "That so much of the said recited act of the second year of his Majesty's reign as enacts that so much of an act passed in the fourth year of the reign of his late Majesty King George the Fourth, intituled 'An Act to grant certain Duties of Excise upon Spirits distilled from Corn or Grain in Scotland and Ireland, and upon Licences for Stills for making such Spirits, and to provide for the better collecting and securing such Duties, and for the warehousing of such Spirits without Payment of Duty,' as provides and enacts, that if any distiller who shall have given any such notice of using malted corn only as aforesaid shall intend to commence or recommence to use unmalted corn or grain, or malt mixed with unmalted grain, at any time when there shall not be any wort or wash in the distillery of such distiller, such time being at least one calendar month distant from the time such distiller began to use malt only under any such notice, it shall be lawful for such distiller, on giving six days' previous notice to the proper officer, so to commence or recommence to use unmalted grain; and such distiller shall not thereafter be liable to any such penalty aforesaid, or be entitled to any such allowance; provided also, that if any distiller using unmalted corn and grain shall be desirous of commencing or recommencing to use malted corn only as aforesaid at any time when there shall not be any wort or wash in the distillery of such distiller, such time being at least one calendar month from the time such distiller shall have commenced or recommenced using unmalted grain as aforesaid, it shall be lawful for such distiller, on giving six days' notice as aforesaid, so to commence or recommence to use malted corn only, shall be and the same is hereby repealed; and the said enactment in the said act of the fourth year of the reign of his late Majesty King George the Fourth so repealed shall be and is hereby revived, and shall be in full force as if the same had not been repealed: Provided always, that distillers in Scotland and Ireland distilling from malt only, and claiming the allowance on the spirits distilled by them, shall continue subject to all the other regulations in the said recited act of the second year of his Majesty's reign not repealed by this act."

2 Will. 4, c. 29, s. 1, repealed, and 4 Geo. 4. c. 94, s. 100, revived.

Sect. 13. "That so much of the said recited act of the second year of his Majesty's reign as enacts, that every distiller who shall be licensed at the time of the said act commencing and taking effect, and who shall intend to use malt only, and to claim the allowance herein granted, shall within one month after the commencement of the said act, and before he shall commence to brew any wort or wash, give notice in writing to the proper officer of Excise in charge of his distillery, in which notice shall be stated that such distiller intends to use malt only, not being mixed with any unmalted corn or grain whatever, during the continuance of his licence; and every distiller who shall be licensed after the commencement of the said act, or who shall renew his licence on the expiration of any former licence, and who shall intend to use malt only, and to claim the said allowance, shall, at the time of taking out or

2 Will. 4, c. 29, s. 5, repealed.

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6 & 7 Will. 4, c. 72.

renewing his licence, give a like notice to the officer in charge of his distillery; and no allowance shall be granted or payable to any distiller who shall not have given such notice at the times thereinbefore mentioned; and if any distiller, having given any such notice, shall withdraw the same, and commence to use raw grain, which he may be allowed to do at any time after the expiration of one month from the date of such notice, it shall not be lawful for such distiller in such distillery, or for any other person licensed for the same premises, to give any other notice of his intention to use malt only, or to receive any allowance in respect of spirits distilled from malt during the remainder of the year for which the licence of such distiller has been granted, shall be and the same is hereby repealed."

Regulations as to foreign spirits.

Sect. 14, reciting that doubts are entertained whether dealers in spirits can lawfully receive and keep in stock foreign or colonial spirits at a less strength than seventeen per cent. under proof; for obviating of which doubts, declares and enacts, "That it shall be lawful for any dealer in spirits, not being also a retailer, to receive and keep in his stock, and to sell, send out, and deliver to any other dealer in spirits, or to any person not being a retailer of spirits, any foreign or colonial spirits at any degree of strength, subject to the regulations in other respects under which dealers in spirits can legally receive, keep, sell, send out, or deliver spirits."

Sect. 15, the operation of certain parts of 6 & 7 Will. IV. c. 38, suspended, and former Excise laws relative to granting certain licences to remain in force.

The several duties and drawbacks in the schedule to the above act being repealed by the following statute (the 5 Vict. sess. 2, c. 25), the new duties there imposed will be found *post*, in the schedule to the latter act.

5 Vict. sess. 2, c. 25.

By the 5 Vict. sess. 2, c. 25, intituled "*An Act to repeal the present and impose and allow new countervailing Duties and Drawbacks of Excise on Mixtures and Preparations made with Spirits, when removed from or into England, Scotland, or Ireland respectively; and to suspend for a limited time so much of an Act of the present Session as repeals the allowance on Spirits made from Malt only in Ireland,*" (31st May, 1842), after reciting that an act was passed in the session of Parliament holden in the sixth and seventh years of the reign of his late Majesty King William the Fourth, intituled "An Act to impose countervailing Duties of Excise on Mixtures, Compounds, Preparations, and Commodities made from or with Spirits, removed from Ireland to England or Scotland, or from Scotland to England, and to grant countervailing Drawbacks on the Removal of the same; to repeal the additional Duties of Excise on Licences to Retailers of Spirits in the United Kingdom; and to alter the Laws relating to Distillers and Retailers of Spirits:" and that an act was passed in the third year of the reign of her Majesty, intituled "An Act for granting to her Majesty Duties of Customs, Excise, and Assessed Taxes:" and that an act was passed in this present session of Parliament, intituled "An Act to impose an additional Duty on Spirits, and to repeal the Allowance on Spirits made from Malt only, in Ireland:" and that by reason of the additional duty imposed by the said last-mentioned act on spirits in Ireland the countervailing duties and drawbacks now payable under the said first-recited act of the sixth and seventh years of the reign of his said late Majesty, on the several mixtures, compounds, preparations, or commodities therein mentioned, when removed from Ireland into England or Scotland, or from England or Scotland into Ireland, are greater in amount than the same should be, according to the rates of duty now payable on spirits in England, Scotland, and Ireland respectively, and it is therefore expedient to repeal all the said countervailing duties and drawbacks, and to impose other countervailing duties and drawbacks in lieu thereof, and to amend the said

6 & 7 Will. 4, c. 72.

3 & 4 Vict. c. 17.

5 Vict. sess. 2, c. 15.

first-recited act: it is enacted, "That the several duties and drawbacks now payable on the several mixtures, compounds, preparations, and commodities mentioned and described in the schedule to the said first-recited act of the sixth and seventh years of the reign of his late Majesty annexed, on the removal of the same from Ireland to Scotland or England, or from Scotland to England respectively, or from England to Scotland or Ireland, or from Scotland to Ireland, shall cease and determine, and in lieu thereof there shall be raised, levied, collected, and paid unto her Majesty, her heirs and successors, upon the several mixtures, compounds, preparations, and commodities mentioned and described in the schedule to this act, on the removal of the same from Scotland or Ireland respectively into England, the several sums of money and duties of Excise as they are respectively inserted, described, and set forth in the said last-mentioned schedule, and that there shall be allowed and paid on the removal of such mixtures, compounds, preparations, and commodities from England to Scotland or Ireland respectively the several drawbacks of Excise also inserted, described, and set forth in the said schedule to this act."

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5 Vict. sess. 2, c. 25. Countervailing duties and drawbacks on articles enumerated in 6 & 7 Will. 4, c. 72, repealed, and new duties and drawbacks granted in lieu thereof.

Sect. 2. "That the said duties and drawbacks hereby imposed and allowed shall be under the management of the commissioners of Excise, and shall be charged, raised, levied, sued for, and recovered, and accounted for, allowed, and paid, in the same manner, and under the same laws, enactments, clauses, provisions, restrictions, rules, pains, penalties, and forfeitures, (except as otherwise provided for by this act), as the duties and drawbacks in lieu of which the same are imposed and allowed were charged, raised, levied, sued for, and recovered, and accounted for, allowed, and paid."

New duties and drawbacks to be under commissioners of Excise, and to be recovered and paid as former ones.

Sect. 3. "That so much of the said first-recited act of the sixth and seventh years of the reign of his said late Majesty as prescribes or provides any rules or regulations or imposes any restrictions on the removal of any of the said mixtures, compounds, preparations, or commodities from Scotland to Ireland, or from Ireland to Scotland, and as limits or prescribes the strength of any of the said mixtures, compounds, preparations, or commodities, or the quantity of spirits to be contained therein, when removed from Scotland to Ireland, or from Ireland to Scotland, or as requires the same when so removed to be accompanied by a permit, shall be and the same is hereby repealed."

So much of 6 & 7 Will. 4, c. 72, as relates to removal of mixtures, &c. from Scotland to Ireland, or Ireland to Scotland, repealed.

Sect. 4. "That no liquor or preparation shall be deemed or taken to be made wines which shall not have undergone the usual process of fermentation in the manufacture thereof, and be in other respects what has been usually known in England as made wines, and shall be removed, and shall be described in the entries and other documents relating to such removal, and in the permits accompanying the same, as made wines; and all made wines which shall be removed as sweets, or otherwise than as aforesaid, shall be forfeited, and may be seized by any officer of Excise or Customs; and every person removing or having removed, or who shall be or shall have been concerned in the removal of the same, shall forfeit one hundred pounds."

What shall be deemed made wines.

Sect. 5. "That the duty hereby imposed and the drawback granted on made wines being fixed on the calculation that about twelve gallons of proof spirits are added in every one hundred gallons of made wines, if any made wines removed from Scotland or Ireland to England shall have added to them any greater quantity of spirits than in the proportion of twelve gallons of spirits of the strength of hydrometer proof in every one hundred gallons of such made wines, or if any made wines, when produced to be shipped from Scotland or Ireland to England, or after the arrival of the same in England respectively, shall be found to contain any greater quantity of spirits than in the proportion of twenty-four gallons of proof spirits (twelve of such twenty-four gallons being the calculation or allowance for spirit generated by fermentation) in

Proportion of proof spirits to be added to and contained in made wines removed.

(15). *Spirituous liquors.*

5 Vict. sess. 2, c. 25.

every one hundred gallons of such made wines, or if any made wines removed from England to Scotland or Ireland on drawback shall have added to them, or shall be found to contain, when produced for shipment, or after arrival in Scotland or Ireland respectively, any less quantity of spirits than in the proportions aforesaid, all such made wines shall be forfeited, and may be seized by any officer of Excise or Customs; and every person removing or having removed, or who shall be or shall have been concerned in the removal of the same, shall forfeit two hundred pounds."

What shall be deemed British compounds.

Sect. 6. "That all spirits, and all other liquors, by whatever name called, having any portion of spirits therein, (not being mixtures, compounds, or preparations, or commodities or made wines, allowed to be removed under the said recited act and this act), which shall be mixed with or shall have had communicated thereto any flavour of juniper, mint, peppermint, cloves, aniseed, caraway seeds, or almonds, or any of the oils thereof, or of any other oil, or the materials producing the same, used by rectifiers or compounders, or in the manufacture of British compounds, and all juices of fruit having spirits added thereto (not being fermented made wines), shall be deemed and taken to be British compounds, and shall not be removed from Scotland or Ireland to England, or from England to Scotland or Ireland, under the penalties and forfeitures contained in an act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled 'An Act to repeal the Duties payable in respect of Spirits distilled in England, and of Licences for distilling, rectifying, or compounding such Spirits, and for the Sale of Spirits, and to impose other Duties in lieu thereof, and to provide other Regulations for the Collection of the said Duties, and for the Sale of Spirits, and for the warehousing of such Spirits without Payment of Duty for Exportation,' for removing British spirits from one part of the United Kingdom to another part thereof, contrary to the regulations of the said last-mentioned act."

6 Geo. 4, c. 80.

On question whether the commodities removed are of the kind mentioned in the entries and permit, proof to lie on the defendant in any information, and plaintiff in an action against officer.

Sect. 7. "That if, upon the trial or hearing of any information, action, or other judicial proceeding, any question or dispute shall be raised whether any made wines, or any other of the mixtures, compounds, preparations, or commodities mentioned in the said recited act, produced to be shipped for removal or removed from Ireland or Scotland to England, or from England to Scotland or Ireland, are of the kind, description, or denomination mentioned in the entries or documents relating to such removal, or in the permit obtained for or used on such removal, the proof thereof shall lie on the defendant or claimant in any information filed for the recovery of any penalty or duty, or for the condemnation of any seizure, and on the plaintiff in any action brought against any officer of Excise or Customs for any seizure made in respect of any such removal."

Sect. 8. So much of 5 Vict. sess. 2, c. 15, as repeals the allowance on spirits made from malt only, in Ireland, suspended.

Sect. 9. So much of last-recited act as provides for malt spirits removed from Scotland to Ireland after 11th March, repealed.

Commencement of act.

Sect. 10. "That this act shall commence and take effect from and after the passing thereof."

(15). *Spirituous liquors.*

5 Vict. sess. 2, c. 25.

SCHEDULE to which the aforegoing Act refers.

ARTICLES ENUMERATED.	*Countervailing* DUTIES *from Scotland or Ireland to England.*
For every gallon thereof removed—	£ s. d.
Ether	0 10 5
Sweet Spirits of Nitre	
Camphorated Spirits	
Lavender Water and other Perfumes, being Spirits scented with Essential Oils, Flowers, or other ingredients	
Compound Spirits of Lavender	
Spirits of Rosemary	
Spirits of Ammonia	
Sal Volatile	
Friar's Balsam	0 6 3
Compound Tincture of Benzoin	
Tincture of Asafœtida	
Tincture of Castor	
Tincture of Kino	
Tincture of Guiacum	
Tincture of Myrrh	
Tincture of Ginger	
Spirit Varnishes	
Other Tinctures and Medicated Spirits	0 4 2
Made Wines	0 0 6

ARTICLES ENUMERATED.	*Countervailing* DRAWBACKS *from England to Scotland or Ireland.*
For every gallon thereof removed—	£ s. d.
Ether	0 10 5
Sweet Spirits of Nitre	
Camphorated Spirits	
Lavender Water and other Perfumes, being Spirits scented with Essential Oils, Flowers, or other ingredients	
Compound Spirits of Lavender	
Spirits of Rosemary	
Spirits of Ammonia	
Sal Volatile	
Friar's Balsam	0 6 3
Compound Tincture of Benzoin	
Tincture of Asafœtida	
Tincture of Castor	
Tincture of Kino	
Tincture of Guiacum	
Tincture of Myrrh	
Tincture of Ginger	
Spirit Varnishes	
Other Tinctures and Medicated Spirits	0 4 2
Made Wines	0 0 6

(16). SUGAR.

(16). *Sugar.*

[1 Vict. c. 57; 3 & 4 Vict. c. 57.]

Foreign sugar imported into this country is subject to the duties imposed under the Customs laws (*vide ante* "Customs"). The duties under the direction and superintendence of the Excise, are only those upon sugar manufactured in the United Kingdom.

(16). *Sugar.*

1 Vict. c. 57.

No Excise licence is necessary to be taken out by makers of sugar.

By the 7 Will. IV. & 1 Vict. c. 57 (*a*), intituled "*An Act to impose certain Duties of Excise on Sugar made from Beet Root in the United Kingdom,*" after reciting that it is expedient to impose certain duties of Excise on sugar made or manufactured from beet root in the United Kingdom, it is enacted, "That from and after the commencement of this act there shall be charged, raised, levied, collected, and paid on every hundred weight of sugar manufactured in the United Kingdom from beet root, and so in proportion for any greater or lesser quantity than a hundred weight, a duty of one pound four shillings" (*b*).

Sugar manufactured from beet root to pay a duty of 1*l.* 4*s.* per cwt.

Duties to be under management of commissioners of Excise.

Sect. 2. "That the said duties by this act imposed shall be under the management of the commissioners of Excise, and shall be charged, raised, levied, collected, paid, and recovered and accounted for under the authority of this act, and in such and the like manner, and in and by any of the general or special means, ways, or methods, and under and subject to the like pains, penalties, and forfeitures, by which any other duties of Excise are or may be charged, raised, levied, collected, paid, recovered, and accounted for; and all the monies arising by the duties by this act imposed and made payable as aforesaid, the necessary charges of raising, recovering, and accounting for the same excepted, shall from time to time be paid into the receipt of her Majesty's Exchequer at Westminster, and shall be carried to and made part of the consolidated fund of the United Kingdom of Great Britain and Ireland."

Manufacturers of beet-root sugar to make entry of their premises.

Sect. 3. "That every maker or manufacturer of sugar from beet root shall, before he shall commence to make or manufacture any sugar, or to prepare any materials for the making or manufacturing of any sugar, make a true and particular entry in writing of all and every cylinder or mill, press, vat, copper, cistern, pan, and other vessel or utensil, sugar-house, warehouse, store-room, and place intended to be made use of by him for the making or keeping any sugar, or the preparing any materials for making the same, by delivering such entry to the proper officer of Excise authorized to receive the same; and in every such entry every sugar-house, warehouse, store-room, and place, cylinder or mill, press, vat, copper, cistern, pan, and other vessel or utensil, shall be distinguished by a particular number or letter, or number and letter or letters, and the respective purpose for which the same is to be used shall be specified and described; and every such entry shall also set forth the name and place of abode of the person or persons making the same, and the place where his or their premises or sugar-house shall be situated, and shall be signed by such maker or makers; and in default of making such entry, such maker shall for every unentered sugar-house, warehouse, store-room, or place, cylinder or mill, press, vat, copper, cistern, pan, or other vessel or utensil, forfeit two hundred pounds, together with all sugar-juice, syrup, materials, and goods therein."

Premises to be marked.

Sect. 4. "That every maker or manufacturer of sugar from beet root shall mark and number, and at all times keep marked and numbered, every sugar-house, warehouse, store-room, and place, cylinder or mill, press, vat, copper, cistern, pan, and other vessel and utensil, by him made, use of for the making or manufacturing or keeping of such sugar, with distinguishing numbers or letters or numbers and letters, denoting the purpose for which each is respectively used, and corresponding to the description thereof in the entry; and every sugar-house, warehouse, store-room and place, cylinder or mill, press, vat, copper, cistern, pan, and other vessel and utensil which shall not be so marked or numbered, or which shall not correspond with the description in the entry, or the use whereof shall

(*a*) The 7 Will. 4 & 1 Vict. c. 57, related to sugar made from beet-root only. This however is now extended, as will be seen, by the 3 & 4 Vict. c. 57, to sugar manufactured from any material.

(*b*) To this must be added the additional 5*l.* per cent. imposed by the 3 Vict. c. 17.

not be described and specified in the entry, shall be deemed and taken to be unentered."

1 Vict. c. 57.

Officers of Excise may enter sugar-houses, and take account of sugar-juice, syrup, &c.

Sect. 5. "That it shall be lawful for any officer of Excise at all times, by day or by night, upon his request, to enter into every sugar-house, warehouse, storeroom, or other place whatsoever entered or made use of by any maker or manufacturer of sugar from beet root for the making or manufacturing or keeping of such sugar, and to inspect and examine the same, and all sugar-juice, syrup, liquor, and materials making into sugar, and from time to time to examine, weigh, and take an account of all sugar, and to gauge or otherwise take an account of the capacity or content of each and every vat, copper, cistern, pan, or other vessel directed to be gauged or the capacity thereof ascertained by this act, or by any order of the commissioners of Excise, and also to examine, gauge, and take an account of all the juice, syrup, liquor, or material making into sugar in every such vat, copper, cistern, pan, or other vessel or utensil; and every maker or manufacturer of sugar from beet root into whose sugar-house or premises aforesaid any officer of Excise shall on his request be prevented or hindered from entering, or having entered shall be hindered or prevented from doing any such act as aforesaid, shall forfeit two hundred pounds."

Syrup-cisterns &c. to be gauged, not to be made use of until gauged and tabled.

Sect. 6. "That no maker or manufacturer of sugar from beef root shall make use of any syrup-cistern, or any vat, copper, pan, or other vessel or utensil directed by the commissioners of Excise to be gauged and the dimensions thereof ascertained, before the same shall have been gauged and tabled by the supervisor or other proper officer of Excise, on pain of forfeiting twenty pounds for every day the same shall be so used."

Size or position of any vessel not to be altered after having been gauged and tabled, except on notice

Sect. 7. "That no such maker or manufacturer of sugar from beet root shall in any manner alter, or suffer to be altered, the size, position, or level of any syrup-cistern, or any vat, copper, pan, or other vessel or utensil, directed to be gauged and tabled, at any time after the supervisor or proper officer of Excise shall have gauged and ascertained the capacity or content thereof, except on notice in writing to the officer of Excise of the intended alteration, on pain of forfeiting one hundred pounds."

Notice to be given of every grinding or mashing of beet-root to be made into sugar.

Sect. 8. "That every such maker or manufacturer of sugar shall from time to time, at least four hours before he shall begin to rasp, grind, or mash any beet root for the making of sugar, deliver to the proper officer of Excise a notice in writing, in which shall be set forth the day and hour when such rasping, grinding, or mashing is to be commenced, on pain of forfeiting one hundred pounds for every omission to give such notice."

When juice or syrup is collected in syrup pan, a declaration of quantity and gravity to be given to officer, who is to attend and take an account of it.

Sect. 9. "That every such maker or manufacturer of sugar shall from time to time, when and as often as any juice or syrup shall be clarified and run into and collected in the syrup-cistern, immediately and without delay deliver to the proper officer of Excise a declaration in writing specifying the particular syrup-cistern, if there shall be more than one in the house in which such juice or syrup shall be contained, and setting forth the quantity of such juice or syrup and the particular gravity thereof, and thereupon the officer of Excise shall attend and take an account of the quantity and gravity of such juice or syrup; and no part of such juice or syrup shall be drawn off or removed from the syrup-cistern for the space of two hours after such declaration shall have been delivered, unless the proper officer of Excise shall have previously taken an account of the quantity and gravity thereof; and every such maker or manufacturer of sugar in whose sugar-house any juice or syrup shall be drawn off or removed from the syrup-cistern without such declaration as aforesaid having been delivered, or before the expiration of two hours after such declaration having been delivered (except as aforesaid), or by whom or on whose behalf any untrue declaration of the quantity

(16). *Sugar.*

or gravity of the juice or syrup in the syrup-cistern shall be delivered, shall forfeit one hundred pounds."

1 Vict. c. 57.

Officer may take samples from syrup cisterns, and gravity of such samples to be deemed gravity of whole contents of cisterns.

Sect. 10. "That it shall be lawful for any officer of Excise from time to time, and whenever and as often as he shall deem it expedient, to take any sample or samples of any juice or syrup in any syrup-cistern in the sugar-house of every such maker or manufacturer of sugar, in order that such officer may ascertain the gravity of such juice or syrup, and from such part of any such syrup-cistern as such officer shall think proper; and the gravity of any such sample so taken shall be and be held to be the true gravity of the whole contents of the syrup-cistern from which any such sample shall be so taken: Provided always, that before any such sample shall be so taken, all the liquor contained in any such syrup-cistern may be stirred and mixed up or mixed together by such maker or manufacturer of sugar, or by any person in his employ, if they shall think fit so to do."

The juice or syrup, after quantity and gravity shall have been ascertained, to be run off to sugar pan, and kept separate during process of manufacture until charged.

Sect. 11. "That after the officer of Excise shall have ascertained and taken an account of the quantity and gravity of the juice or syrup in the syrup-cistern, or at the expiration of two hours after such declaration as aforesaid shall have been delivered, all such juice or syrup shall be run off from such cistern and removed into the sugar-pan, and continued in the process of being made into sugar; and after such declaration as aforesaid shall have been delivered, no other juice, syrup, or sugar shall be added to or mixed with such juice or syrup in respect of which such declaration shall have been delivered, but the same shall be kept separate and distinct in the process of manufacture, until the sugar, the produce thereof, shall have been weighed and charged with duty; and if such juice or syrup shall not be so kept separate and distinct in the process of manufacture, or if any other juice, syrup, or sugar shall be added thereto, the maker or manufacturer of sugar shall forfeit one hundred pounds."

When the manufacture of sugar is completed, notice to be given of time when it will be ready to be weighed.

Sect. 12. "That every such maker or manufacturer of sugar shall, within two days after all the sugar produced from any juice or syrup in respect of which such declaration as aforesaid shall have been delivered, or of which such account shall have been taken in the syrup-cistern, shall be made, and the manufacture thereof completed, give to the officer of Excise under whose survey he shall be a notice in writing, specifying the day and hour when such sugar will be ready to be weighed and charged with duty; and thereupon such officer shall attend and weigh and take an account of all such sugar, and shall charge the same with duty, in the manner hereinafter mentioned; and if any such maker or manufacturer of sugar shall refuse or neglect to give such notice, or shall remove such sugar, or any part thereof, without having given such notice, or before the officers of Excise shall have weighed and taken an account of the same, he shall forfeit two hundred pounds."

Mode of charging duty:

First, from gravity of the syrup,

Sect. 13. "That for and in respect of every gallon of juice or syrup which shall be made in the sugar-house of any maker or manufacturer of sugar from beet root, and run into and collected in the syrup-cistern, the officer of Excise shall charge such maker or manufacturer of sugar for a quantity of sugar, in proportion to the gravity of such juice or syrup, as set forth in the declaration thereof, or as ascertained and taken account of by such officer, according to a table to be prepared under the directions of and approved by the commissioners of Excise for showing the quantity of sugar contained in any given quantity of juice or syrup, according to the specific gravity thereof, as ascertained by the saccharometer, after making an allowance of fifty per centum on such quantity for molasses, drainage, and wash."

Second, by weight of sugar produced.

Sect. 14. "That whenever any officer of Excise shall weigh and take an account of any sugar made at the sugar-house of any such maker or manufacturer of sugar after the same shall have been manufactured and finished, such officer shall charge the maker or manufacturer of such sugar

on the full quantity of sugar which he shall so weigh and take an account of, exclusive of any waste or drainage which may have run therefrom."

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1 Vict. c. 57.

Sect. 15. "That every officer of Excise under whose survey any such maker or manufacturer of sugar shall be, or any other officer who shall be appointed so to do, shall from time to time, at the expiration of every six weeks or at such other times as the commissioners of Excise shall direct, make out and deliver to the collector of Excise, or to such person or persons as the commissioners of Excise shall appoint to receive the same, an account or return in writing of the quantity of sugar for which such maker of sugar shall have become chargeable with duty in such preceding six weeks or period, and of the duty payable thereon; and every such officer is hereby required in every such return to charge and such officer shall charge such maker or manufacturer according to whichever of the modes of charging hereinbefore prescribed shall produce the highest amount of duty; and such officer shall also leave a copy of such account or return with such maker or manufacturer, and the account or return of such officer shall be a charge on every such maker or manufacturer of sugar, who shall pay and clear off the duty appearing by such account or return to have become due within six days after such account or return shall have been made, or in default thereof shall forfeit double the amount of such duty."

Officer of Excise to make out return of duty every six weeks, and charge maker by whichever mode will produce highest amount of duty.

Sect. 16. "That any such saccharometer may be used for ascertaining the gravity of juice or syrup for the charge of duty under the provisions of this act as shall from time to time be ordered and prescribed by any order of the commissioners of Excise; and all juice and syrup shall for the purposes of this act be deemed and taken to be of the gravity at which such saccharometer shall on the application thereof denote or indicate such juice or syrup to be: Provided always, that it shall not be necessary on the trial of any information, action, suit, or other proceeding to produce or give in evidence any such order of the commissioners of Excise for the use of any such saccharometer."

Any saccharometer prescribed by commissioners of Excise may be used for ascertaining gravity of syrup.

Sect. 17. "That every such maker or manufacturer of sugar shall and he is hereby required to provide and keep in his sugar-house just and sufficient scales and weights, affixed and placed in a proper and convenient place to be approved of by the supervisor or surveyor of Excise; and every such maker or manufacturer shall permit and suffer any officer of Excise to use the said scales and weights for the purpose of weighing and taking an account of all the sugar which shall be at any time in the possession of any such maker or manufacturer; and every such maker or manufacturer of sugar who shall neglect to keep such scales and weights so affixed and placed as aforesaid, or who shall not permit or suffer any officer of Excise to use the same, shall forfeit one hundred pounds; and every such maker or manufacturer who shall in the weighing of any sugar make use of, or procure or suffer to be made use of, any false or unjust or insufficient scales or weights, or who shall make use of any force or violence, or practise any art, device, or contrivance, by which any officer of Excise may be hindered or prevented or deceived in taking the true account or weight of any sugar, or charging the true amount of duty thereon, shall forfeit three hundred pounds, together with all the sugar weighed or produced to be weighed at the time of such offence, and all such unjust or insufficient scales or weights."

Makers of sugar to keep scales and weights, and permit officers of Excise to use them.

Penalty for neglect, 100*l.*,

for using false scales or weights, &c. 300*l.*

Sect. 18. "That every such maker or manufacturer of sugar shall, when and as often as he shall be thereto required by any officer of Excise, aid and assist the officers of Excise with a sufficient number of his workmen or servants in weighing and taking an account of all sugar in the possession of such maker or manufacturer required to be weighed under the provisions of this act, on pain of forfeiting for every refusal or neglect one hundred pounds."

Maker of sugar to assist with his servants in weighing.

Sect. 19. "That every such maker or manufacturer of sugar shall at all times keep all sugar which shall not have been charged with duty

Sugar not charged to be kept separate

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1 Vict. c. 57.

from that which has been.

separate and apart from all sugar which shall have been so weighed and charged, on pain of forfeiting one hundred pounds."

Penalty on evading duty.

Sect. 20. "That every such maker or manufacturer of sugar who shall hide or conceal, or cause to be hidden or concealed, or shall remove, or convey away or deposit, or cause to be removed, or conveyed away from, or deposited in any place, any sugar, or any juice or syrup, to evade the duties chargeable thereon, or any part of such duties, or before the full duties shall have been charged thereon, shall, over and above every other penalty to which he may in so doing become subject, forfeit five hundred pounds."

Provisions of 7 & 8 Geo. 4, c. 53, and 4 & 5 Will. 4, c. 51, to extend to this act.

Sect. 21. "That all the powers, provisions, clauses, and enactments, pains, penalties, and forfeitures contained in an act passed in the seventh and eighth years of the reign of his Majesty King George the Fourth, intituled, 'An Act to consolidate and amend the Laws relating to the Collection and Management of the Revenue of Excise throughout Great Britain and Ireland,' and of an act passed in the fourth and fifth years of the reign of his late Majesty King William the Fourth, intituled 'An Act to amend the Laws relating to the Collection and Management of the Revenue of Excise,' shall, except when otherwise hereby provided for, extend to and be applied to this act, and to the duties hereby granted, and penalties and forfeitures hereby imposed."

Commencement of act.

Sect. 22. "That this act shall commence and take effect from and after the passing thereof."

3 & 4 Vict. c. 57.

By the 3 & 4 Vict. c. 57, intituled, "*An Act to impose Duties of Excise on Sugar manufactured in the United Kingdom*" (7th August, 1840), after reciting that an act was passed in the first year of the reign of her present Majesty, intituled "An Act to impose certain Duties of Excise on Sugar made from Beet Root in the United Kingdom," whereby a duty of Excise of one pound four shillings was imposed on every hundred weight of sugar manufactured in the United Kingdom from beet root; and that an act was passed in this present session of Parliament, intituled "An Act for granting to her Majesty Duties of Customs, Excise, and Assessed Taxes," whereby an additional duty or charge of five pounds per centum was imposed upon the produce and amount of all the several duties and revenues of Excise, except upon the produce and amount of the duties of Excise on horses let to hire, and on licences taken out by persons letting horses to hire, and upon the produce and amount of the duties on spirits made and distilled in the United Kingdom; and that since the passing of the said first recited act, sugar has been manufactured and is now making in the United Kingdom from potatoes, rice, and other materials, and it is therefore expedient to extend the said act, and to impose on all sugar, from whatever materials made, in the United Kingdom, the same duties as are by law payable on sugar made from beet root; it is enacted, "That there shall be charged, raised, levied, collected, and paid on every hundred weight, and so in proportion for any greater or lesser quantity of all sugar manufactured in the United Kingdom, from whatever materials made, the same amount of duty as is by law payable on sugar made or manufactured from beet root."

7 Will. 4, & 1 Vict. c. 57.

3 & 4 Vict. c. 17.

The duty imposed on beet-root sugar imposed on all sugar made in United Kingdom.

Duties to be under commissioners of Excise and raised under former acts.

Sect. 2. "That the said duties by this act imposed shall be under the management of the commissioners of Excise, and the same shall be charged, raised, levied, collected and recovered, applied and accounted for under the enactments and provisions of the said first recited act, and in such and the like manner, and in and by the same means, ways, or methods, by which any other duties of Excise are or may be charged, raised, levied, collected, and recovered, applied, and accounted for; and the said first recited act, and all and every other act or acts relating to the duties of Excise, and all and every fine, pain, penalty, and forfeiture, of any nature or kind whatsoever, for any offence against or in breach of the said recited act, or any other act or acts for securing the duties of Excise, or for the regulation thereof, in force immediately before the passing of this act, and the several clauses, powers, and di-

rections therein contained, shall and the same are hereby respectively directed and declared to extend to, and shall be applied, practised, and put in execution for and in respect of the duties of Excise by this act imposed, in as full and ample manner as if all and every the said act and acts, clauses, provisions, powers, directions, fines, pains, penalties, and forfeitures were repeated and re-enacted in this act."

(16). *Sugar.*

1 Vict. c. 57.

Sect. 3. "That all sweets and saccharine matter which shall resemble or be in the form or imitation of sugar, or which shall be capable of being used as a substitute for sugar, shall be deemed and taken to be sugar within the meaning of this act."

Sweets, &c. used for sugar deemed sugar.

(17). Sweets or made Wines.

(17). *Sweets or made Wines.*

By the 4 & 5 Will. IV. c. 77, s. 9, the duties and drawbacks of Excise on sweets or made wines, and all duties upon licences required to be taken out by any maker of sweets or made wines, were repealed (save and except any arrear, &c).

4 & 5 Will. 4, c. 77. Duties and drawbacks repealed.

But by sect. 10 it is enacted "That nothing herein contained shall extend or be deemed or construed to extend to repeal or affect any duty on licences to be taken out by retailers of sweets or made wines, or mead or metheglin, but all such licences shall continue to be taken out in the same manner as if this act had not passed."

Licences on retailers of sweets not to be affected.

Sect. 11. "And for declaring who shall be deemed a retailer of sweets after the said tenth day of October, one thousand eight hundred and thirty-four, when the said duties on sweets are to cease and determine, be it enacted, that every person who shall sell or send out any liquor made by infusion, fermentation, or otherwise, from fruit or sugar mixed with other materials, commonly called sweets or made wines, or any mead or metheglin, in any less quantity than in a whole cask containing fifteen gallons, shall be deemed and taken to be a retailer of sweets, and shall take out a licence accordingly."

Persons selling sweets or metheglin in any less quantity than 15 gallons to be deemed retailers.

Tea, *see* tit. "*Coffee.*"

Tiles, *see* tit. "*Bricks.*"

(18). Tobacco and Snuff.

(18) *Tobacco and Snuff.*

[3 & 4 Vict. c. 18; 5 & 6 Vict. c. 93.]

The law respecting the importation and exportation of tobacco is under the management of the Customs. See *ante*, tit. "*Customs.*"

For the amount of the annual excise licence required to be taken out by every manufacturer of tobacco or snuff under the provisions of the 6 Geo. IV. c. 81 (*a*), increased by the additional 5*l.* per cent. by the 3 Vict. c. 17, see *ante*, p. 645.

Licence.

The 3 & 4 Vict. c. 18, intituled "*An Act to discontinue the Excise Survey on Tobacco, and to provide other Regulations in lieu thereof,*" (3rd July, 1840), reciting that, by an act passed in the ninth year of the reign of his late Majesty King George the Fourth, intituled "An Act to provide for the Execution throughout the United Kingdom of the several Laws of Excise relating to Licences and Survey on Tea, Coffee, Cocoa, Pepper, Tobacco, Snuff, Foreign and Colonial Spirits and Wine, notwithstanding the Transfer to the Customs of the Import Duties on any of such Commodities," all acts relating to the revenue of Excise in force at and immediately before the year one thousand eight hundred and twenty-five, with respect to dealers in and sellers of coffee, cocoa, pepper, tobacco, snuff, foreign and colonial spirits and wine, and manufacturers of tobacco and snuff respectively, and with respect to the taking and keeping account of and survey of all stocks of such commodities respectively in the possession of such traders respectively, and to the manufacture of tobacco and snuff, and with respect to the grant-

3 & 4 Vict. c. 18. Discontinuance o Excise survey on tobacco.

9 Geo. 4, c. 44.

(*a*) See sect. 9 of the 3 & 4 Vict. c. 18, *post*, p. 982, as to licence duty.

(18). *Tobacco and Snuff.*

3 & 4 Vict. c. 18.

ing of permits for the removal of such commodities as aforesaid respectively, were declared and enacted to have remained and continued, and were continued in full force and virtue, as laws relating to the revenue of Excise, save and except so far as any of such acts, or any part or parts thereof, might have been repealed or altered by any subsequent act relating to the Excise passed for that purpose, and were to be executed and carried into effect in all particulars, save and except as to the landing and shipment of the said commodities respectively, and the collection and payment of the duties of customs on the said respective commodities, and the lodging of such commodities in warehouses without payment of duty, by the commissioners of Excise and their officers: and that since the passing of the said recited act the taking and keeping the account of and survey of stocks of dealers in and sellers of coffee, cocoa, pepper, and wine, and also the taking and keeping the account of and survey of the stocks of dealers in and sellers of tea, by the officers of Excise, have been discontinued; and it is expedient further to discontinue the account and survey of stocks of manufacturers of, dealers in, and retailers of tobacco and snuff, and to provide other regulations in lieu thereof, enacts, "That an Act passed in the first year of the reign of his Majesty King George the First, intituled 'An Act to prevent the Mischiefs by manufacturing Leaves or other Things to resemble Tobacco, and the Abuses in making and mixing of Snuff;' an act passed in the twenty-ninth year of the reign of his late Majesty King George the Third, intituled 'An Act for repealing the Duties on Tobacco and Snuff, and for granting new Duties in lieu thereof;' an act passed in the thirtieth year of the reign of his said late Majesty King George the Third, intituled 'An Act to explain and amend an Act made in the last Session of Parliament, intituled 'An Act for repealing the Duties on Tobacco and Snuff,' and for granting new Duties in lieu thereof;' so much of an act passed in the fifty-ninth year of the reign of his said late Majesty King George the Third, intituled 'An Act for granting to his Majesty certain additional Duties of Excise on Tea, Coffee, Cocoa Nuts, Tobacco and Snuff, Pepper, Malt, and British Spirits, and consolidating the same with the former duties thereon, and for amending certain Laws of Excise relating thereto,' as relates to tobacco and snuff; an act passed in the second year of the reign of his late Majesty King George the Fourth, intituled 'An Act for better securing the Duties of Excise on Tobacco;' an act passed in the Parliament of Ireland in the thirty-seventh year of the reign of his said late Majesty King George the Third, intituled 'An Act for regulating and extending the Tobacco Trade, and for securing the Duties payable upon the Import and Manufacture of Tobacco;' an act also passed in the Parliament of Ireland in the fortieth year of the reign of his said late Majesty King George the Third, for amending and continuing the last-recited act; an act passed in the fifty-second year of the reign of his said late Majesty King George the Third, intituled 'An Act to grant to his Majesty certain Duties of Excise on Tobacco to be manufactured in Ireland; and to allow certain Drawbacks in respect thereof, in lieu of former Duties of Excise and Drawbacks; and to provide for the regulating and securing the Collection of the said Duties,' shall be and the same are hereby repealed, save and except as to any penalties or forfeitures which may have been incurred under the said recited acts or any or either of them respectively; all which penalties and forfeitures shall and may be sued for, recovered, and enforced in the same manner as if this act had not been passed."

Acts repealed:

2 Geo. 1, c. 46.

29 Geo. 3, c. 63.

30 Geo. 3, c. 40.

Part of 59 Geo. 3, c. 53.

1 & 2 Geo. 4, c. 109.

37 Geo. 3 (I).

40 Geo. 3 (I).

52 Geo. 3, c. 58.

Manufacturers, dealers, and retailers of tobacco or snuff to enter their premises with the Excise.

Sect. 2. "That every manufacturer of and dealer in and retailer of tobacco or snuff in the United Kingdom shall make a true entry of every workhouse, storehouse, room, shop, and place by him made use of, or intended to be made use of, for the manufacturing, storing, keeping, and selling of tobacco or snuff, by delivering such entry to the officer of Excise in whose survey his manufactory or premises shall be situated; and

in every such entry every workhouse, storehouse, room, shop, and place shall be distinguished by a particular number or letter, or number and letter, or letters; and every such workhouse, storehouse, room, shop, and place shall also be kept marked and numbered with the like distinguishing numbers or letters, or number and letters, corresponding to the description thereof in the entry; and in default thereof such manufacturer, dealer, or retailer shall, for every workhouse, storehouse, room, shop, or place not entered, or not marked or numbered, forfeit one hundred pounds, together with all tobacco and snuff found therein."

(18). *Tobacco and Snuff.*

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Officers of Excise may enter premises, and examine tobacco and snuff therein.

Sect. 3. "That it shall be lawful for any officer of Excise at any time, but between the hours of ten of the clock in the evening and six of the clock in the morning only, with the assistance of a constable or other peace officer, to enter into any workhouse, storehouse, room, shop, or place made use of by any manufacturer of, dealer in, or retailer of tobacco or snuff, for the manufacturing, keeping, or selling of any tobacco or snuff, and to inspect and examine all tobacco and snuff therein; and every manufacturer of, dealer in, and retailer of tobacco or snuff, who shall, on demand, refuse to shew to any officer of Excise any tobacco or snuff in his custody or possession, or shall conceal from the sight or inspection of any officer of Excise any tobacco or snuff, shall forfeit two hundred pounds, together with all the tobacco or snuff so concealed."

Leaf or unmanufactured tobacco not to be received into a manufacturer's stock, but from warehouse, and accompanied by permit.

Sect. 4. "That no manufacturer of tobacco or snuff shall receive into any workhouse, storehouse, room, shop, or place, or into his custody or possession, any leaf or unmanufactured tobacco of any description otherwise than from the warehouse in which the same shall be warehoused under the laws and regulations of the revenue of Customs, and in the same hogsheads, cask, chest, or package, with the same marks and numbers thereon, in which the same shall be cleared and delivered from such warehouse, on payment of the duty (save and except in the case of samples duly ticketed and certified by the proper officer of Customs), nor without a true and lawful permit granted by the proper officer of Excise, under the laws and regulations of Excise relating to permits accompanying such tobacco; and every manufacturer of tobacco or snuff who shall receive or have in his custody or possession any leaf or unmanufactured tobacco, contrary to the directions aforesaid, shall forfeit the same, and two hundred pounds for every such offence."

Permit to be delivered up on next visit of officer.

Sect. 5. "That every manufacturer of tobacco or snuff who shall receive into his custody or possession any leaf or unmanufactured tobacco shall, on the next visit of the officer of Excise under whose survey he shall be, produce and deliver up to such officer the permit which shall have accompanied such tobacco, and shall also, if required, show to such officer all such tobacco, or in case of any part thereof having been laid down for manufacture before the visit of the officer, so much thereof as shall remain, on pain of forfeiting for every omission or neglect two hundred pounds, and all such leaf or unmanufactured tobacco."

No leaf or unmanufactured tobacco to be removed without permit.

Sect. 6. "That no leaf or unmanufactured tobacco of any description, save and except such samples as aforesaid, shall be carried or removed from any part or place in the United Kingdom to any other place or part thereof, without a true and lawful permit granted by the proper officer of Excise, under the rules and regulations of an act passed in the second year of the reign of his late Majesty King William the Fourth, intituled 'An Act to consolidate and amend the Laws regulating the granting and issuing Permits for the Removal of Goods under the Laws of Excise,' accompanying the same, under the pains, penalties, and forfeitures in the said act contained."

2 & 3 Will. 4, c. 16.

Sect. 7, "as to tobacco stalks not to be removed in any less quantity than fifty pounds, nor without a certificate, is repealed by the following act of 5 & 6 Vict. c. 93, s. 9; and other regulations are by s. 10 made in lieu thereof, see *post*, p. 985.

A book to be delivered to manufacturers, who shall

Sect. 8. "That a book, prepared with proper and distinct columns for the purpose, shall be delivered by the proper officer of Excise to every

(18). *Tobacco* manufacturer of tobacco or snuff; and every such manufacturer shall, on the same day on which he shall receive any leaf or unmanufactured tobacco, or any stalks or returns of tobacco, write and enter in such book as aforesaid, in the proper column prepared for such purpose, the day when and the number of pounds weight of leaf or unmanufactured tobacco, stalks, or returns of tobacco which he shall have so received, and the christian and surname of the person from whom and the place from which he shall have received the same; and every such manufacturer shall keep such book, with all entries made therein, in some public and open part of his entered premises, for the inspection of the officers of Excise, and shall deliver up every such book as aforesaid to any officer of Excise demanding the same, and permit him to make any minute therein or any extract therefrom, which such officer shall think fit; and every manufacturer of tobacco who shall receive any leaf or unmanufactured tobacco, stalks, or returns of tobacco into his custody or possession, and shall not make entry of the particulars thereof as aforesaid within the time hereinbefore required, or who shall not keep such book as aforesaid, or shall not deliver up the same to any officer of Excise, on demand, or shall obstruct or hinder any officer of Excise in making any minute therein or extract therefrom, or shall convey away or conceal the same, or destroy or tear out any leaf therefrom, or make any false entry therein, or fraudulently alter any entry therein, shall forfeit two hundred pounds, together with all the leaf or unmanufactured tobacco, stalks, or returns of tobacco of which due entry shall not have been made in such book."

3 & 4 Vict. c. 18. enter therein all tobacco received, with name of person from whom received, &c.

Such book to be open to inspection.

Penalty for default, 200*l.*

Licence duty on manufacturer of tobacco or snuff to be rated on the quantities entered for manufacture.

Sect. 9, reciting that the duty imposed on licences taken out by manufacturers of tobacco or snuff is rated according to the quantity of tobacco and snuff work weighed out for manufacture, and after the commencement of this act such quantities will not be weighed, nor any account thereof kept by the officers of Excise; enacts, "That every manufacturer of tobacco or snuff shall, for every licence to be taken out by him under the provisions of an act passed in the sixth year of the reign of his said late Majesty King George the Fourth, intituled 'An Act to repeal several Duties payable on Excise Licences in Great Britain and Ireland, and to impose other Duties in lieu thereof; and to amend the Laws for granting Excise Licences,' pay such amount of duty as shall, according to the rates by the said act imposed, appear to be payable in respect of the quantity of leaf or unmanufactured tobacco, stalks, and returns of tobacco shown by the permits and by the entries in the said book to have been brought in or received by him in the year previous to taking out such licence."

6 Geo. 4, c. 81.

Manufacturer of tobacco and snuff, on application for licence, to produce his book, and make declaration of truth of entries therein.

Sect. 10. "That every manufacturer of tobacco or snuff shall, at the time of applying for his licence in each year, produce to the collector or other officer of Excise authorized to grant licences, the said book hereinbefore required to be kept, with the quantities of leaf tobacco, stalks, and returns of tobacco received, as entered in the respective columns, duly cast up and brought to totals; and such manufacturer shall, before being granted any new licence, make before the said collector or other officer who is hereby authorized to receive the same a declaration in writing under the provisions of an act passed in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled 'An Act to repeal an Act of the present Session of Parliament, intituled 'An act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits;' and to make other Provisions for the Abolition of unnecessary Oaths,' setting forth and declaring that the said book does contain a full, true, particular, and just account of all leaf or unmanufactured tobacco, stalks, and returns of tobacco of every description received by him in the year preceding the fifth day of July then last past; and if such declaration shall be false or untrue in any particular the manufacturer making the same shall be subject to

5 & 6 Will. 4, c 62

the pains and punishment prescribed by the said recited act of the fifth and sixth years of his late Majesty's reign, for making a false and untrue declaration."

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Sect. 11, as to no person to cut, colour, or manufacture leaves of trees, &c. to imitate tobacco, is repealed by the 5 & 6 Vict. c. 93, s. 11, and other regulations are made in lieu thereof. See *post*, p. 986.

Sect. 12. No person to hawk about tobacco or snuff for sale, &c.; this is repealed by the 5 & 6 Vict. c. 93, s. 12, and other regulations are made in lieu thereof. See *post*, p. 986.

No drawback on cut, roll, or carrot tobacco containing stalks.

Sect. 13. "That no drawback shall be allowed on any cut, roll, or carrot tobacco containing any tobacco stalks, or which has not been wholly made from tobacco leaf having the tobacco stalk stripped and separated therefrom, or from such leaf so stripped, and returns of tobacco leaf so stripped, and without the stalks thereof; and every manufacturer of tobacco who shall manufacture or have in his custody or possession any such cut, roll, or carrot tobacco for exportation shall forfeit two hundred pounds; and all such tobacco shall be forfeited, and may be seized by any officer of Customs or Excise."

Penalty on manufacturing such for exportation.

No drawback on tobacco not properly manufactured.

Sect. 14. "That no drawback shall be allowed on any tobacco which shall not have been wholly manufactured from tobacco on which the full duty on importation shall have been paid, nor on any tobacco which shall be mixed with any dirt or rubbish, or which shall be made or manufactured with, or to which shall be added any other ingredients, matter, or thing not necessary or usual in the manufacturing of tobacco,"

Penalty on fraudulently attempting to obtain drawback.

Sect. 15. "That every person who shall enter or ship, or cause to be entered or shipped, or produce or cause to be produced to any officer of Customs to be shipped for exportation, any tobacco not entitled to drawback under this or any other act relating to tobacco, or any other goods, matter, or thing as tobacco, the same not being tobacco, or shall fraudulently remove, deposit, or conceal any tobacco or other goods, matter, or thing, with intent unduly to obtain any drawback on tobacco, or any greater drawback than he would otherwise be entitled to, shall, over and above all other penalties which he may thereby incur, forfeit treble the amount of the drawback sought to be obtained, or two hundred pounds, at the election of the commissioners of Customs; and all such tobacco or other goods, matters, or things shall be forfeited, and may be seized by any officer of Customs or Excise."

Commencement of act.

Sect. 16. "That this act shall commence and take effect on the fifth day of July one thousand eight hundred and forty."

5 & 6 Vict. c. 93.

By the 5 & 6 Vict. c. 93, intituled "*An Act to amend an Act of the fourth year of her present Majesty, to discontinue the Excise Survey on Tobacco, and to provide other Regulations in lieu thereof,*" (10th Aug. 1842), reciting that an act was passed in the session of Parliament held in the third and fourth years of the reign of her present Majesty, intituled "An Act to discontinue the Excise Survey on Tobacco, and to provide other Regulations in lieu thereof:" and whereas the practice has greatly increased of introducing in the manufacture of tobacco and snuff various articles other than tobacco, either as substitutes for tobacco or snuff, or to increase the weight of tobacco or snuff, by which practice the duties on tobacco are greatly injured, and the revenue further damnified by drawbacks being obtained on adulterated tobacco, and it is therefore expedient and necessary, in protection of the revenue, to make further provision than is contained in the said recited act for preventing such evil practice, and to amend the said recited act; it is enacted, "That no manufacturer of tobacco shall, in manufacturing any tobacco, make use therewith of any other material, or any other liquid or substance, or matter or thing, than water only, or in manufacturing any snuff make use therewith of any other material, or any other liquid or substance, or matter or thing, than water, or water and salt, or alkaline salts only, or lime water in snuff known as Welch or Irish snuff; and every manufacturer of to-

3 & 4 Vict. c. 18.

Manufacturers to use water only in manufacturing tobacco, and no other liquid or substance than as herein described in manufacturing snuff.

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bacco who shall, in manufacturing any tobacco, make use therewith of any other material, liquid, or substance, matter or thing, than tobacco and water only, or in manufacturing any snuff make use therewith of any other material, liquid, or substance, matter or thing, than water. or water and salt, or alkaline salts only, or lime water in snuff known as Welch or Irish snuff, and every manufacturer of, dealer in, or retailer of tobacco, who shall add to, mix with, or put into or amongst, or who shall cause or suffer or permit to be added to, mixed with, or put into or amongst any tobacco or snuff, unmanufactured, manufacturing, or manufactured, any other material, liquid, substance, matter, or thing than, as respects tobacco, water only, and as respects snuff, water, or water and salt, or alkaline salts only, or lime water in snuff known as Welch or Irish snuff, shall forfeit three hundred pounds."

Penalty, 300*l.*

Penalty not to be incurred by use of essential oils for scenting or flavouring snuff.

Sect. 2 provides and enacts, "That nothing hereinbefore contained shall subject any manufacturer of, dealer in, or retailer of tobacco to the said penalty of three hundred pounds, or to any forfeiture, for or by reason of his scenting or flavouring any snuffs, so that only the essential oils usually made use of for that purpose shall be used for communicating the scent or flavour, nor any manufacturer to the said penalty for or by reason of his using oil in making up spun or roll tobacco."

Penalty on receiving, sending out, or having in possession tobacco or snuff manufactured otherwise than with water, 200*l.*

Sect 3 enacts, "That every manufacturer of, dealer in, or retailer of tobacco who shall receive or take into or have in his possession, or who shall sell, send out, or deliver, any tobacco or snuff which shall have been manufactured with, or shall have had added thereto or mixed therewith, or into or amongst which there shall have been put, either before or whilst in process of manufacture, or after being manufactured, or in which there shall be found on examination thereof any other material, liquid, substance, matter, or thing than, as respects tobacco, water only, or in roll tobacco water and oil only, and as respects snuff, water, or water and salt, or alkaline salts only, or lime water in snuff known as Welch or Irish snuff, shall forfeit two hundred pounds."

Tobacco manufactured otherwise than with water forfeited.

Sect. 4. "That all tobacco and snuff which shall have been manufactured with, or shall have added thereto or mixed therewith, or into or amongst which there shall have been put, either before or whilst in process of manufacture, or after being manufactured, or which on examination shall be found to contain any other material, liquid, substance, matter, or thing than, as respects tobacco, water only, or in roll tobacco water and oil, and as respects snuff, water, or water and salt, or alkaline salts only, or lime water in snuff known as Welch or Irish snuff, shall, wheresoever the same may be found, be forfeited."

Manufacturers not to have in their possession sugar, honey, leaves, &c.

Sect. 5, "That no manufacturer of tobacco shall receive or take into or have in his custody or possession any sugar, treacle, molasses, or honey, (except for the necessary and ordinary use of his family, the proof whereof shall lie on such manufacturer), nor any commings or roots of malt, or any ground or unground roasted grain, ground or unground chicory, lime, sand (not being tobacco sand), umbre, ochre, or other earth, sea weed, ground or powdered, wood, moss, or weeds, or any leaves, or any herbs or plants (not being tobacco leaves or plants) respectively, nor any substance or material, syrup, liquid, or preparation, matter or thing, to be used or capable of being used as a substitute for or to increase the weight of tobacco or snuff, on pain of forfeiting the same and two hundred pounds."

Penalty, 200*l.*

Manufacturers of tobacco, who are also grocers at the passing of the act, may continue to carry on the trades.

Sect. 6, reciting that it may happen that some manufacturers of tobacco may also carry on the business of a grocer, and it is expedient to provide for such persons not being subject to the last-mentioned penalty of two hundred pounds for or by reason of their having sugar or molasses and other of the aforesaid commodities usually sold by grocers in their custody or possession on the premises used in carrying on their grocery business, enacts, "That where any person shall before

5 & 6 Vict. c. 93.

the first day of June one thousand eight hundred and forty-two have carried on, and shall at the passing of this act be still carrying on, the trade or business of a manufacturer of tobacco, and also the trade or business of a grocer, it shall be lawful for the commissioners of Excise to authorize and empower such person to continue to carry on the business of a manufacturer of tobacco without being subject to the said penalty for or by reason of having such of the said commodities as are usually sold by grocers in his custody or possession, so as his premises for manufacturing tobacco be separated, to the satisfaction of the commissioners of Excise, from, and all internal communication prevented with, his premises used for carrying on his business of a grocer, and so that such commodities shall be in his custody or possession only on his grocery premises, and for the purposes of his trade or business as a grocer, and shall not be found or discovered in his premises entered or used for the manufacture of tobacco or snuff."

Officers of Excise may take samples of tobacco or snuff.

Sect. 7. "That it shall be lawful for any officer of Excise, at any time that he shall see fit, to take a sample or samples of any tobacco or snuff unmanufactured, or in process of manufacture, or manufactured, in the stock or possession of any manufacturer of, dealer in, or retailer of tobacco, paying for the same, if demanded, at the current wholesale price of such tobacco or snuff."

No person to cut, colour, or manufacture, or have in his possession, any leaves or other matters to imitate or to be mixed with tobacco or snuff.

Sect. 8. "That every person who shall cut, grind, pound, colour, stain, dye, or manufacture any leaves, or any herb or plant, moss or weed, or any wood, chicory, commings or roots of malt, or any other vegetable or other matter or material to imitate or resemble tobacco or snuff, or who shall prepare any of the said articles, matters, or materials to be mixed with or to be added to tobacco or snuff, or who shall have in his custody or possession any leaves, or any herb, plant, moss, or weed, or any ground or powdered wood, chicory, commings or roots of malt, or any other vegetable or other matter or material, cut, ground, pounded, coloured, stained, dyed, or manufactured to imitate or resemble tobacco or snuff, or prepared for the purpose of being mixed with or added to tobacco or snuff, or intended to be so cut, ground, pounded, coloured, stained, dyed, or manufactured or prepared, or who shall sell, dispose of, or deliver to any manufacturer of tobacco any leaves, herbs, plants, moss, or weeds, ground or powdered wood, chicory, commings or roots of malt, or other vegetable or other matter, or any preparation or mixture thereof, or any syrup, liquid, or preparation to be used in the manufacture of tobacco or snuff, or to be added to or mixed therewith, shall forfeit two hundred pounds; and all such leaves, herbs, plants, moss, or weed, ground or powdered wood, chicory, commings or roots of malt, and other vegetable or other matter or preparation, or mixture thereof, syrup, liquid, or preparation, together with all machines, tools, materials, vessels, and utensils for cutting, grinding, pounding, colouring, staining, dyeing, manufacturing, or preparing the same, shall be forfeited."

Penalty.

3 & 4 Vict. c. 18, s. 7, repealed.

Sect. 9. "That so much of the said recited act as enacts 'That no tobacco stalks or returns of tobacco shall be removed from any place in or part of the United Kingdom to any other place or part thereof in any quantity less than fifty pounds weight, nor unless the package containing the same shall have firmly and securely pasted or glued thereon a certificate, clearly written or printed, and signed by the manufacturer by whom the same shall be sent out, or his foreman or chief workman on his behalf, setting forth the name of such licensed manufacturer, and the entered premises from which such tobacco stalks or returns of tobacco shall be sent out, the weight of the same, the day, month, and year on which the same shall be sent out, and the name and entered premises of the licensed manufacturer to whom the same are to be delivered; and every manufacturer of tobacco who shall send out, deliver, or remove or receive any tobacco or returns of tobacco in any less quantity than aforesaid, or not contained in a package having such cer-

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tificate as aforesaid firmly pasted or glued thereon, or who shall make out or use any false certificate, shall forfeit one hundred pounds; and all tobacco stalks or returns of tobacco which shall be sent out, delivered, or received, or be found removing, in any less quantity than as aforesaid, or without such certificate as aforesaid, shall be forfeited; and the person removing or who shall have removed the same shall forfeit fifty pounds,' shall be and the same is hereby repealed, save and except as to any offence committed or any penalty or forfeiture incurred before the passing of this act."

Tobacco stalks not to be removed in less quantities than fifty pounds, nor without a certificate.

Sect. 10. "That no tobacco stalks or returns of tobacco shall be removed from any place in or part of the United Kingdom to any other place or part thereof in any quantity less than fifty pounds weight, nor unless the package containing the same shall have firmly and securely pasted or glued thereon a certificate, clearly written or printed, and signed by the manufacturer by whom the same shall be sent out, or his foreman or chief workman on his behalf, setting forth the name of such licensed manufacturer, and the entered premises from which such tobacco stalks or returns of tobacco shall be sent out, the weight of the same, the day on and the month and year in which the same shall be sent out, and the name and entered premises of the licensed manufacturer to whom the same are to be delivered; and every manufacturer of tobacco who shall send out, deliver, or remove or receive any tobacco stalks or returns of tobacco in any less quantity than aforesaid, or not contained in a package having such certificate as aforesaid firmly pasted or glued thereon, or who shall make out or use any false certificate, shall forfeit two hundred pounds; and all tobacco stalks or returns of tobacco which shall be sent out, delivered, or received or be found removing in any less quantity than as aforesaid, or without such certificate as aforesaid, shall be forfeited, and the person removing or who shall have removed the same shall forfeit fifty pounds."

enalty.

3 & 4 Vict. c. 19, s. 11, repealed.

Sect. 11. "That so much of the said recited act as enacts 'That no person whatsoever shall cut, colour, stain, or manufacture any leaves of trees, herb, or plant whatsoever (not being tobacco leaves or plants) into the form of or to imitate or resemble tobacco unmanufactured or manufactured, or shall mix with or add to any tobacco any leaves of trees, herb, or plant, not being tobacco leaves or plants, or shall sell, vend, utter, or expose for sale, or have in his custody or possession, any leaves of trees, herb, or plant cut, coloured, stained, or manufactured, or to be cut, coloured, stained, or manufactured into the form or in imitation of or to resemble tobacco, on pain of forfeiting one hundred pounds, with all such leaves, herbs, or plants, which may be seized by any officer of Excise or Customs,' shall be and the same is hereby repealed, save and except as to any offence committed or any penalty or forfeiture incurred before the passing of this act."

3 & 4 Vict. c. 19, s. 12, repealed.

Sect. 12. "That so much of the said recited act as enacts 'That no person or persons whatsoever shall hawk or sell or offer for sale any tobacco or snuff of any description in or about the streets or highways or other places, or in any other manner or place whatsoever, except in the entered premises of a licensed manufacturer or dealer in or retailer of tobacco or snuff, on pain of forfeiting all such tobacco or snuff, and one hundred pounds; and it shall be lawful for any officer of Excise or Customs to arrest and detain any person who shall hawk or sell or offer for sale in manner aforesaid any tobacco or snuff, and to convey such person before one or more of her Majesty's justices of the peace residing near to the place where such person shall be arrested and detained; and the justice or justices before whom such person shall be conveyed shall have full authority and he and they is and are hereby required forthwith to hear and determine what shall be then and there alleged against such person, and on confession of the party, or by proof on oath of one or more credible witness or witnesses made of such offence, to convict any person so offending as aforesaid; and the person so convicted shall im-

mediately on such conviction pay the said sum of one hundred pounds, or some mitigated amount, not being less than one-fourth part thereof; and if any person so convicted shall not forthwith pay down the said penalty or amount, the said justice or justices shall and he and they is and are hereby authorized and required, by warrant under his or their hand, to commit the person so convicted to any gaol or prison of the county, there to be kept to hard labour for three calendar months: Provided always, that nothing hereinbefore contained shall extend to make liable to the said penalty any servant or person duly employed by any licensed manufacturer of or dealer in tobacco or snuff to travel for orders, and producing samples, in the due and ordinary course of business,' shall be and the same is hereby repealed, save and except as to any offence committed or forfeiture or penalty incurred before the passing of this act."

No person to hawk about tobacco or snuff for sale under a penalty, and officers may arrest offenders, and convey them before a justice of the peace, who shall forthwith hear the case, and inflict or mitigate the penalty.

Sect. 13. "That no person or persons shall hawk or sell or offer for sale any tobacco or snuff of any description in any house or premises, or in or about the streets or highways or other places, or in any other manner or place whatsoever, except as a licensed manufacturer of or dealer in or retailer of tobacco in his entered premises, on pain of forfeiting all tobacco and snuff in his possession, and one hundred pounds; and it shall be lawful for any officer of Excise or Customs to arrest and detain any person who shall hawk or sell or offer for sale any tobacco or snuff in any house or premises, or in or about the streets or highways or other places, or in any other manner than as aforesaid, and to convey such person before one or more of her Majesty's justices of the peace residing near to the place where such person shall be arrested and detained; and the justice or justices before whom such person shall be conveyed shall have full authority and he and they is and are hereby required forthwith to hear and determine what shall be then and there alleged against such person, and on confession of the party, or by proof on oath of one or more credible witness or witnesses made of such offence, to convict any person so offending as aforesaid; and the person so convicted shall immediately on such conviction pay the said sum of one hundred pounds, or some mitigated amount, not being less than one-fourth part thereof; and if any person so convicted shall not forthwith pay down the said penalty or amount, the said justice or justices shall and he and they is and are hereby authorized and required, by warrant under his or their hand, to commit the person so convicted to any gaol or prison of the county, there to be kept to hard labour for three calendar months: Provided always, that nothing hereinbefore contained shall extend to make liable to the said penalty any servant or person duly employed by any licensed manufacturer of or dealer in tobacco or snuff to travel for orders, and producing samples, in the due and ordinary course of business."

Proviso.

Interpretation of terms.

Sect. 14. "That in the said recited act and this act the words 'manufacturer of, dealer in, and retailer of tobacco,' shall include manufacturers of, dealers in, and retailers of snuff, and snuff millers; and the word 'tobacco' shall include tobacco stalks, tobacco flour, returns of tobacco, and segars, and tobacco of every description; and 'snuff' shall include all snuff work and snuffs of every description, except where in terms or by the context a more limited construction shall appear to be intended."

Commencement of act.

Sect. 15. "That this act shall commence and take effect on the tenth day of August one thousand eight hundred and forty-two: Provided always, that the penalty and forfeiture hereinbefore imposed upon manufacturers of, dealers in, and retailers of tobacco, for receiving or having in possession, or selling, sending out, or delivering, tobacco or snuff which shall have been manufactured with, or which shall have had added thereto or mixed therewith, or in which shall be found, any other material than water only, or water and salt, alkaline salt, or lime water, shall not be enforced in respect of any tobacco until the first day of

(18). *Tobacco and Snuff.*

5 & 6 Vict. c. 93.

November one thousand eight hundred and forty-two; nor until after the tenth day of August one thousand eight hundred and forty-three shall the said penalty or forfeiture be enforced in respect of any snuff or snuff work which shall have been manufactured or be in the course of manufacture before or at the passing of this act, or which shall be made from returns of any tobacco manufactured before the passing of this act; but nevertheless, in every case in which any question shall arise whether any snuff or snuff work was so manufactured or in course of manufacture, the proof of the same having been manufactured or in course of manufacture before or at the passing of this act, or having been made from returns of tobacco manufactured before the passing of this act, shall lie on the manufacturer, dealer, or retailer in whose possession such snuff or snuff work shall be found."

(19). *Vinegar, Acetous Acid, and Verjuice.*

(19.) Vinegar, Acetous Acid, and Verjuice.

[7 & 8 Will. III. c. 30; 10 & 11 Will. III. c. 21; 26 Geo. III. c. 73; 58 Geo. III. c. 65; 6 Geo. IV. c. 37.]

Licence.

By the 6 Geo. IV. c. 81, every maker of vinegar (*a*) or acetous acid for sale must take out a 5*l.* annual licence for that purpose; this amount is liable to the additional 5*l.* per cent. under the 3 Vict. c. 17. (*See ante*, p. 646).

By the 10 & 11 Will. III. c. 21, s. 15, thirty-four gallons shall be accounted a barrel of vinegar, vinegar-beer, or liquors preparing for vinegar, according to the standard ale quart.

Penalty on using any place without giving notice

Sect. 14. If any vinegar-maker shall, without giving notice at the next Excise-office, use any storehouse, warehouse, cellar, or other place, for the making, laying, or keeping any vinegar-beer, or liquors preparing for vinegar, he shall, for every such storehouse or other place so made use of without such notice, forfeit 50*l.*

By the 26 Geo. III. c. 73 (made perpetual by the 35 Geo. III. c. 89), s. 56, before any person shall be entitled to carry on the trade of a vinegar-maker, he shall make an entry with the proper officer of Excise of the brewhouse, buildings, yard, or place, for the carrying on such trade; and in such entry shall specify whether he be a maker of vinegar from malt or corn, or from molasses or sugar, or from any and what other materials; and every entry not conformable thereto shall be void.

Vinegar maker not to be a distiller or rectifier.

Sect. 55. No vinegar-maker from molasses or sugar, or from any other materials except malt or corn, shall carry on, alone or in partnership, the trade of a distiller or maker or rectifier of spirits, in the same buildings or premises, or within two miles thereof; and all entries made for carrying on the trade of a distiller, or maker or rectifier of spirits, contrary hereto, shall be void.

Refusing to admit gauger.

By the 7 & 8 Will. III. c. 39, s. 17, if any maker or retailer of vinegar shall, upon due request or demand made by the officer in the day-time, or if in the night with a constable, refuse to permit him to enter his

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(*a*) It was held, that a maker of vinegar for sale, whether as vinegar or as blacking, or as any other article not being vinegar properly so called, or pure and applicable to the common uses of vinegar, is liable to the duty of Excise, and the other provisions of the several statutes relating to the makers and preparers of *vinegar* for sale; and that it is not necessary to *state* in the information that the liquid was preparing *for sale;* that may be proved. (*Attorney-General* v. *Green*, 4 *Price*, 224). And it was held that tar distillers, necessarily making tar acid, or acetous acid, in the progress of their manufacture, are therefore taken to be *vinegar makers* within the sixth section of the 24 Geo. III. c. 56, and that they were thereby subjected, as such, to all the Excise regulations made by the statutes passed in respect of the makers of vinegar, and were not protected by the proviso in that section; and, consequently, were liable to an information for penalties for not giving the usual notice to the Excise required by the fourteenth section of the 10 & 11 Will. III. c. 21. (*Attorney-General* v. *Handgrave*, 11 *Price*, 217).

house, storehouse, or other place belonging to or used by him, and to take account of the vinegar therein or any liquors prepared for vinegar, he shall forfeit 15*l.*

(19). *Vinegar, &c.*

By the 58 Geo. III. c. 65, s. 10, every officer of Excise shall at all times, upon his request (but, if in the night, to be accompanied by a supervisor or surveyor), be permitted to enter into the entered house, warehouse, and other place belonging to or used by any vinegar-maker for sale, and to take an account, by weight, measure, or gauge, as to such officer shall seem fit and convenient, of all such liquor and material, and of all sulphuric acid, in the custody and possession of such maker; and if any person shall obstruct, molest, or prevent him from so doing, he shall forfeit 200*l.*

Officers of Excise may enter premises used by vinegar-maker.

By the 10 & 11 Will. III. c. 21, s. 12, no vinegar-maker shall receive into his custody stale beer. returns of beer or ale, cider, verjuice, or other liquors for making vinegar, nor deliver out any vinegar in casks or by the gallon, without notice first given to the officer, unless from September 28, to March 25, yearly, between seven in the morning and five in the evening, and from March 25, to September 29, between five in the morning and seven in the evening, on pain of 50*l.*

At what times liquors to be received.

Sect. 13. On receiving such liquors into his custody, he shall show the same to the gauger before he mixes them with any other liquors, rape, or other materials, on pain of 20*l.*

To be shown to gauger.

By the 58 Geo. III. c. 65, s. 11, "No vinegar-maker for sale shall have or receive into his custody or possession any vinegar or acetous acid, or any sugar-water, sugar-wash, molasses-water, molasses-wash, alegar, stale beer, returns of beer or ale, cider, verjuice, or other liquor prepared or preparing for vinegar or acetous acid, or capable of being used as or applied to the purposes of vinegar or acetous acid, or any sulphuric acid, molasses, brown sugar, honey (except for his private family), or any pyrolignite or acetate of lime or soda, or other material (except corn or grain) fit or proper to be made into or mixed with vinegar or acetous acid, without giving twelve hours' previous notice thereof in writing to the officer of Excise, under whose survey such maker shall then be, specifying the day and time of the day when the same will be taken or received into his custody, and the quantity and description thereof, that such officer may be present to take account thereof, by weight, measure, or gauge; nor shall diminish, remove, or mix the same or any part thereof with his stock, until such officer shall have taken account, nor afterwards use or employ any such materials uncharged with duty, without accounting for the same to the satisfaction of the officer, on pain of forfeiting for every such offence 100*l.*"

Vinegar-makers not to take into custody vinegar, &c. without twelve hours' notice to officer, on pain of 100*l.*

Sect. 12. "No person shall sell, deliver, or send out any fermenting or fermented wort or wash, not being fermented beer, charged with duty, to any person whatsoever; and no person, not being an entered vinegar-maker, shall sell, deliver, or send out any vinegar or purified acetous acid, alegar, stale beer, stale ale, or stale cyder, verjuice, sugar-water, or molasses-water, or other liquors prepared or preparing for vinegar or acetous acid, or capable of being used as or applied to the purposes of vinegar or acetous acid, except to an entered vinegar-maker, under such notice for receiving the same as aforesaid, or without the duties hereby imposed being first paid and charged in respect of such vinegar, or purified acetous acid, alegar, stale beer, stale ale, or stale cyder, verjuice, sugar-water, or molasses-water, or other liquors, and the same being accompanied with a permit or certificate as herein mentioned, on pain of forfeiting all such liquors, which may be seized by any officer of Excise, together with the cattle and carriages used in removing the same; and every person so offending or receiving such liquors shall forfeit 200*l.*"

No wort to be sent out, nor vinegar, &c. unless duty paid, and accompanied with a permit.

By the 7 & 8 Will. III. c. 30, s. 16, if any maker of vinegar for sale shall conceal or convey any vinegar, or liquor preparing for vinegar, from the view of the gauger, he shall, for every barrel, forfeit 40*s.*

Concealing.

(19). *Vinegar, &c.*

Vinegar or materials concealed, adulterated, &c. forfeited, and offender to forfeit 100*l.*

By the 58 Geo. III. c. 65, s. 25, "If any person shall remove, hide, or conceal any vinegar, or acetous acid, or liquors preparing for or capable of being used as or applied to the purposes thereof, or any material for making, rectifying, or purifying the same, subject or liable to the duties of Excise, with intent to evade the payment of such duties, or to defraud the King; or shall adulterate or mix with any vinegar or acetous acid any other acid (except sulphuric acid), in the proportion not exceeding one-thousandth part thereof by weight, all such vinegar or acetous acid, liquors, and materials so removed, taken away, hidden, concealed, or adulterated, shall be forfeited, and may be seized by any officer of Excise; and beside such forfeiture, every person so offending, and all persons assisting therein, or receiving any vinegar, liquors, or materials without such permit, shall severally forfeit 100*l.*"

For the provisions of this act for trying the strength of vinegar by an acetometer, see sections 8 & 9; and for regulating the mode of charging the stills, see sections 13 & 14.

What deemed vinegar, &c.

By the 10 & 11 Will. III. c. 21, s. 11, all stale beer, returns of beer or ale, cider, verjuice, or any other liquor proper to be made into vinegar, which shall be found in the possession of any common vinegar-maker (except such as are to be drank in his family, and which shall be kept separate for that purpose), shall be deemed vinegar, or liquors preparing for vinegar.

Liquors, of whatever kind, prepared for vinegar for sale, to be charged with duty hereby imposed.

By the 58 Geo. III. c. 65, s. 6, all liquors brewed or made, by whatsoever means or manner, into vinegar or acetous acid for sale, and all liquors prepared or preparing for, or capable of being used as, or applied to, the purposes of vinegar or acetous acid made for sale, or found in the possession of any vinegar-maker for sale, in Great Britain, or imported into Great Britain, whether any such liquor shall be sold, or made for sale, unmixed or mixed with any other ingredients, or shall be known and called by the name of vinegar, alegar, verjuice, radical vinegar, acetous acid, acetic acid, pyroligneous acid, or by any other name, shall be respectively subject to and chargeable with the duties hereby imposed.

Persons preparing such liquors deemed vinegar-makers.

Also by sect. 6, every person who shall make, prepare, extract, distil, rectify, purify, or sell any such liquors as aforesaid, not being a dealer in, retailer, or seller of such vinegar, or acetous acid only, as he shall receive by permit or certificate, as herein mentioned, from some entered vinegar-maker, shall be deemed a vinegar-maker, and be subject to all the license and other duties, regulations, restrictions, and penalties, to which makers of vinegar are subject and liable.

Sect. 24. So much of the 6 Geo. III. c. 14, s. 16, as directs that the duty on cider or perry unfit for sale, and charged with the duties on vinegar, should be allowed and drawn back, shall be repealed.

Sect. 27. If any question shall arise whether any vinegar or acetous acid, or liquors or materials prepared for the purposes of vinegar, &c., which shall have been seized, the proof of such vinegar, &c. not being so shall lie upon the owner or claimer thereof.

Making vinegar for sale from malt, &c. in or at a certain distance from any entered place for distilling or preparing pyroligneous acid, &c. in or at a certain distance from any place entered for making vinegar from malt, &c. penalty, 500*l.*

By sect. 15, "No person shall make vinegar for sale from malt, or other fermenting material, at, in, or upon any house or place entered or used for making, distilling, rectifying, or purifying acetous acid, called pyroligneous acid, or for making or compounding white lead, sugar of lead, verdigris, iron liquor, or acetate of lime, acetate of soda, or acetate of alumine, or within the distance of three hundred feet in a direct line from any such house or place, nor shall any person make, prepare, distil, rectify, or purify any acetous acid, called pyroligneous acid, or make or compound any white lead, sugar of lead, verdigris, iron liquor, or acetate of lime, acetate of soda, or acetate of alumine, at, in, or upon any house or place entered or used for making vinegar from malt, or other fermenting materials, for sale, or within the distance of three hundred feet in a direct line from any such house or place as aforesaid; nor shall any person rectify or purify any acetous acid, for sale, called

pyroligneous acid, from any other materials than pyrolignite or acetate of lime, or soda, upon pain of forfeiting, for every such offence, the sum of 500*l.*"

(19). *Vinegar, &c.*

Sect. 16. "That all and every vinegar-maker and makers for sale, being a rectifier or purifier, rectifiers or purifiers of acetous acid, subject and liable to duties as aforesaid, shall provide, maintain, and enter as aforesaid a proper and secure warehouse, storehouse or cellar, or warehouses, storehouses, or cellars, to the satisfaction of the supervisor of Excise in whose district it or they shall or may be situated, with good and sufficient locks and fastenings thereto respectively, to be provided and maintained by such supervisor at the expense and charge of such maker or makers respectively, into which warehouse or warehouses, storehouse or storehouses, cellar or cellars, or some or one of them, all and every of the dry or concrete acetate and acetates, or pyrolignite or pyrolignites of lime or soda for making, rectifying, or purifying acetous acid, called pyroligneous acid, received into the possession of such maker or makers, shall, immediately after the receipt thereof, and before the same shall be rectified or purified for sale, and upon such notice as aforesaid by such maker, be put and deposited by and at his, her, or their expense: and that every such warehouse, storehouse and cellar respectively, shall be kept locked up and secured by the proper officer of Excise under whose survey the same shall from time to time be, except at such time or times only as such officer shall be attending therein for the purpose of depositing such materials therein or for weighing or taking an account of such materials brought thereto, or delivering such materials therefrom, or such warehouse, storehouse, or cellar, shall be under necessary reparation: and if any such maker or makers shall neglect or refuse at his, her, or their own expense, to provide and maintain such warehouse, storehouse, or cellar, or warehouses, storehouses, or cellars, and enter the same as aforesaid, or to pay such supervisor as aforesaid, upon demand, for any lock or locks, key or keys, or other fastening or fastenings thereon or thereto, or the renewal or reparation thereof, found and provided by such supervisor for the security thereof, or shall refuse or neglect to put or deposit any such material or materials as aforesaid, immediately after the having or receipt thereof, and before the rectification or purification thereof, and upon such notice as aforesaid, in one or more of such warehouses, storehouses, or cellars, according to the directions of this act; or if any such maker or makers, or other person or persons shall damage, force or open, or cause to be damaged, forced, or opened, any such lock or other fastening, or enter or cause to be entered any such warehouse, storehouse, or cellar, save at such time and times as aforesaid, then and in each and every such case such maker or makers, or other person or persons so offending, shall for each and every such offence forfeit and lose the sum of 100*l.*"

Vinegar-makers, being rectifiers of acetous acid, to provide warehouses, &c. with locks and fastenings for depositing the concrete acetates under the care of proper officer.

Makers neglecting to provide such warehouses, &c. or to pay for such fastenings, or refusing to deposit such materials, &c.

Sect. 17. "That when and so often as any such maker or makers as aforesaid shall intend or be desirous to have any such material or materials as aforesaid delivered from or out of any such warehouse, storehouse, or cellar, for the purpose of rectifying or purifying acetous acid therefrom, he, she, or they shall give twelve hours' notice in writing to the officer of Excise under whose survey such warehouse, storehouse, or cellar shall be of his, her, or their intention, specifying in such notice the particular day and hour at which he, she, or they intends or intend to have such materials delivered out for the purpose aforesaid, and the quantity so to be weighed and delivered; and upon such notice being so given, the proper officer or officers shall attend at the time mentioned in such notice, and open such warehouse, storehouse, or cellar, and such maker shall thereupon proceed to weigh, and shall with all due diligence and dispatch weigh out in the presence of such officer or officers, and to his satisfaction, the whole of the material or materials mentioned in such notice: Provided always nevertheless, that no such maker or

Before taking materials from warehouse, &c. twelve hours' notice to be given to officer, who shall attend to weigh the same.

Number and hours of notice.

(19). *Vinegar, &c.*

makers shall be at liberty to give any such notice for having any such material or materials so delivered oftener than once in twenty-four hours, or at any other time than between the hours of six in the morning and four in the afternoon; and every notice given for having any such material or materials so delivered oftener than as aforesaid, or at any other time or hour than between the hours in that behalf aforesaid, shall and the same is hereby declared to be null and void to all intents and purposes whatsoever."

Scales and weights to be provided by maker, &c.

Sect. 18. "That all and every maker and makers as aforesaid, being a rectifier or purifier, rectifiers or purifiers of acetous acid, is and are hereby required to provide and keep proper, sufficient, and just scales and weights at such warehouse, storehouse, or cellar as aforesaid, for the purpose of from time to time weighing and taking an account of such materials as aforesaid, and of all acetous acid and materials for making, rectifying, or purifying acetous acid, which shall at any time be in the custody or possession of any such maker or makers as aforesaid, and shall permit and suffer any officer or officers of Excise to use the same for that purpose, and shall give him every needful assistance in weighing any such acetous acid or materials; and if any such maker or makers shall upon demand as aforesaid neglect or refuse to provide any such scales and weights, or either of them, or shall hinder, obstruct, or prevent any officer or officers of Excise from using the same, or shall neglect or refuse to assist him in weighing any acetous acid or materials; or if any such maker or makers as aforesaid shall, in the weighing of any such acetous acid or material, make use of, or cause or suffer to be made use of, any false, unjust or insufficient beam, scale or scales, or weight or weights, or shall use or practise any art, device, or contrivance, by which any such officer or officers shall or may be deceived or hindered or prevented from taking the true and just weight, and ascertaining the true quantity of any acetous acid or material; such maker or makers shall for every such offence forfeit and lose the sum of one hundred pounds, together with such false, unjust or insufficient beams, scales or weights, and the acetous acid and materials respectively then weighing or weighed, and the same shall and may be seized by any officer or officers of Excise."

Makers neglecting to provide such scales and weights, or making use of false ones, &c.

Vessels shall be provided for keeping acetous acid, but officer shall take contents, &c. of vessels before they are used.

Sect. 19. "That all and every such maker and makers as aforesaid shall, and he, she, and they is and are hereby required to provide in his, her, or their room or place wherein he, she, or they rectifies or purifies, rectify or purify any acetous acid called pyroligneous acid for sale, one or more vessel or vessels of which he, she, or they shall from time to time give notice in writing to the proper officer of Excise, and shall in such notice declare the true tare or weight, and content or capacity thereof, and the true tare of any material in or with which the same may be then packed, and which vessel and vessels shall be gauged or measured by the proper officer or officers of Excise before the same shall be used by such maker or makers to hold or receive any such acetous acid as aforesaid, in order that the content or capacity thereof, and the quantity of any acetous acid put therein, may at any time be correctly weighed, known, or ascertained by any such officer or officers, into which vessel or vessels every such maker or makers shall run or put, and collect all his rectified or purified acetous acid as the same is made, and before the same or any part thereof shall be removed from such entered place for sale or otherwise, and shall continue the same therein until the proper officer shall have taken a true account thereof; and if any such maker or makers shall neglect or refuse to provide such vessel or vessels as aforesaid, or in any respect change or alter the same, or to give such notice thereof as aforesaid, or give any false notice thereof, or remove any such acetous acid from his, her, or their workhouse or place in which the same shall have been rectified or purified, or mix the same or any part thereof with his, her, or their stock, without first running or putting and collecting the same and every part thereof into such ves-

Penalty for not providing such vessels, or removing the acid before account is taken 100*l.*

sel or vessels as aforesaid, and continuing the same and every part thereof therein until the proper officer shall have taken a true account thereof, or shall by any device or contrivance deceive or hinder or prevent the officer in or from weighing or taking a true account of all such acetous acid, according to the actual quantity and strength thereof, and charging the duty aforesaid accordingly, every such maker or makers shall for every such offence forfeit and lose the sum of one hundred pounds.'

(19). *Vinegar, &c.*

Sect. 20. "That if, at any time hereafter, any officer of Excise shall find or discover that the quantity of vinegar or acetous acid, called pyroligneous acid, made, extracted, rectified, or purified from pyrolignite or acetate of lime, or soda, by any such maker, as aforesaid, and taken account of and charged with duty in any of the quarters ending, respectively, on the fifth day of January, fifth day of April, fifth day of July, and tenth day of October, in every year, shall be deficient, or fall short of the quantity of vinegar, or acetous acid, which should, or ought to have been, or was capable of being produced from the pyrolignite or acetate of lime, or soda, respectively, received by such maker within such quarter respectively, for the purpose of being rectified or purified, computing dry or concrete pyrolignite or acetate of lime to produce three quarters of a gallon of acetous acid of the strength of proof for every pound avoirdupois thereof, and dry or concrete pyrolignite or acetate of soda to produce one gallon of acetous acid of the strength of proof, for every pound avoirdupois, and acetate of lime in solution to produce one gallon of acetous acid of the strength of proof for every two gallons thereof of like strength, and acetate of soda in solution to produce two gallons of acetous acid of the strength of proof for every three gallons thereof of the like strength thereof, without such deficiency being duly accounted for to the satisfaction of the officer, such officer is hereby authorized and required to charge such maker with duty on so much and such quantity of such acetous acid, of the strength of proof, as shall be equal to the quantity so found or discovered to be deficient."

Officer, on discovering a deficiency in the quantity of vinegar, &c. which should have been produced, to charge such deficiency with the duty, unless satisfactorily accounted for.

Sect. 21. "That when any vinegar maker or makers shall have occasion to remove from his, her, or their stock any vinegar or acetous acid subject to the duties by this act imposed, the proper officer or officers of Excise of the respective division where such entered warehouse or warehouses shall be situated, shall, without fee or reward, from time to time, upon a request note being made and delivered according to the directions of this act, by such maker or makers, grant and give a permit in writing, signed by the said respective officer or officers, expressing the quantity, quality, and strength (if exceeding proof) of vinegar or acetous acid to be removed, the name or names of the persons from and to whom the same is intended to be removed, and that the duty thereon has been paid, and limiting the time in which such vinegar or acetous acid shall be removed from and out of the warehouse after taking out such permit, and the time in which such vinegar or acetous acid shall be delivered or received into the warehouse or warehouses, or other place or places, of the person or persons to whom the same is to be sent: provided always, that no permit shall be granted to any vinegar maker or makers for the removal of more vinegar or acetous acid, cast and computed at proof as aforesaid, than the quantity for or in respect of which he, she, or they shall have been charged with duty or received by permit, delivered to and taken account of by the officer, and shall accordingly then have credit in stock, and that every request note from any vinegar maker or makers for that purpose shall be void; and that no such permit as aforesaid shall be granted, or be valid, unless such maker or makers requiring the same shall make and send or deliver to the officer or officers of Excise hereby authorized to grant such permit, a request note in writing, specifying the name of the person to whom such vinegar or acetous acid is intended to be sent, the quantity, quality, and strength (if exceeding proof) thereof; and also the number and respec-

Permit to be obtained on removal of vinegar.

Conditions on which permit shall be granted.

(19). *Vinegar, &c.*

Vinegar removed without permit in manner herein described to be forfeited, and maker to forfeit 100*l.*

tive content of the casks, bottles, jars, or vessels containing the same, and likewise whether the same is to be removed by land or by water, and by what mode of conveyance the same is intended to be sent; and all such vinegar or acetous acid which shall be removed without such permit as aforesaid, or under a description not conformable to this act, or under a false description, or exceeding the quantity or strength expressed in the permit accompanying the same, together with the casks, bottles, jars, vessels, and other packages containing the same, shall be forfeited, and shall and may be seized by any officer or officers of Excise; and the maker or makers from whose stock the same shall be sent out, shall for every such offence incur a penalty of one hundred pounds."

Sect. 22, authorizing the survey of dealers in and retailers of vinegar, is repealed by the 6 & 7 Will. IV. c. 52, s. 10.

Officer in taking stock, on finding an excess, the quantity in excess shall be forfeited, and dealer shall forfeit 100*l.*

Sect. 23. "That any officer or officers of Excise shall and may at any time or times take an account of the stock of vinegar or acetous acid respectively of any maker or makers of or dealer or dealers in vinegar or acetous acid liable or subject to the duties, or any of them, imposed by this act; and if, on taking any such account, the quantity of vinegar or acetous acid respectively found in any such stock, added to the quantity for which permits shall have been granted, or certificates sent out as directed by this act, since the time of taking the last preceding account of such stock, shall exceed the quantity of vinegar or acetous acid respectively found in such stock at the time of taking such last preceding account, added to the quantity since made, or legally received with permit or certificate, duly delivered to the proper officer, unto such stock as aforesaid, such vinegar or acetous acid respectively, when above proof, being cast and computed at that strength, a quantity of vinegar or acetous acid equal to the quantity found in excess shall be forfeited and lost, and shall and may be seized and taken by the officer or officers of Excise who shall discover the same, from and out of such stock; and the person or persons in whose stock such quantity of vinegar or acetous acid so found in excess shall be discovered, shall forfeit and lose the sum of one hundred pounds."

Commissioners may compound for the duty with any rectifier.

Sect. 26. "That it shall and may be lawful to and for the commissioners of Excise for the time being, or the major part of them respectively, from time to time to compound for the duty by this act imposed for and in respect of acetous acid made in Great Britain, with any rectifier or purifier of acetous acid, in such manner and form, and upon such terms and conditions, as shall in the judgment of such commissioners be most to the advantage and improvement of the receipts of the said duty: anything in this or any other act to the contrary thereof notwithstanding."

Powers of the 12 Car. 2, c. 24, or any other law of Excise, to extend to this act.

Sect. 28. "That all and every of the powers, directions, rules, penalties, forfeitures, clauses, matters, and things, which in and by an act made in the twelfth year of the reign of King Charles the Second, intituled 'An Act for taking away the Court of Wards and Liveries and Tenures in Capite, and by Knights' Service and Purveyance; and for settling a Revenue upon his Majesty in lieu thereof;' or by any other law now in force relating to his Majesty's revenue of Excise, are provided and established, shall be (except so far as any of them may be altered by this act) practised, used, and put in execution, in and for the purposes of this act, as fully and effectually, to all intents and purposes, as if all and every the said powers, rules, directions, penalties, forfeitures, clauses, matters, and things, were particularly repeated and re-enacted in this present act."

Recovery and application of penalties.

Sect. 29. "That all fines, penalties, and forfeitures imposed by this act shall be sued for, recovered, levied, or mitigated by such ways, means, or methods as any fine, penalty, or forfeiture may be sued for, recovered, levied, or mitigated by any law or laws of Excise, or by action of debt, bill, plaint, or information in any of his Majesty's courts

of record at Westminster, or in the court of Exchequer in Scotland respectively: and that one moiety of every such fine, penalty, or forfeiture shall be to his Majesty, his heirs and successors, and the other moiety to him, her, or them who shall discover, inform, or sue for the same."

(20). *Wines.*

Present duties on vinegar.

So much of the following act as relates to the Excise duties and drawbacks upon vinegar is inserted to shew the present amount of duties payable thereupon.

6 Geo. 4, c. 37.

By the 6 Geo. IV. c. 37, s. 1, from and after the 5th day of January, 1826, the duties of Excise payable and the drawbacks allowed in Great Britain and Ireland respectively, upon vinegar, are repealed: and

By sect. 2. "For and upon every one hundred gallons, imperial standard gallon measure, of vinegar or acetous acid, or liquors prepared or preparing for vinegar or acetous acid, brewed or made in any part of the United Kingdom of Great Britain and Ireland, for sale, to be paid by the maker thereof, the sum of sixteen shillings and eight-pence, and so in proportion for any greater or less quantity" (*a*).

By sect. 3 the duties are to be under the management of the commissioners of Excise.

(20). Wines.

(20). *Wines.*

Licence to deal and retail.

By the 6 Geo. IV. c. 81 (*ante*, p. 646), an annual licence is required to be taken out by dealers in and retailers of foreign wines; the amount of which duty is now increased at the rate of 5*l.* per cent. under the powers of the 3 Vict. c. 17.

Duties.

For the amount of duties on the importation and exportation of wines, *see ante*, "*Customs*," tit. "*Present Duties of Customs.*"

By the 5 & 6 Will. IV. c. 39, intituled "An Act to exempt certain Retailers of Spirits to a small amount from the additional Duties on Licences, and to discontinue the Excise Survey on Wine, and the use of Permits for the removal thereof," (31st August, 1835).

So much of any acts as requires entries by dealers in wine, &c. repealed.

Sect. 3. "That from and after the passing of this act, so much of any act or acts as requires any dealer in or retailer of wine to make entry of the premises by him occupied for dealing in or retailing wine, and as requires the keeping an account by the officers of Excise of the stocks of wine in the possession of dealers or retailers, and as authorizes the survey by officers of Excise of such stocks and of the premises in which the same are kept, shall be and the same is hereby repealed."

Retailers of wine and spirits to continue to make entry, and officers of Excise may enter, &c. places used for keeping wine.

Sect, 4 provides and enacts, "That where any dealer in or retailer of wine shall also be a dealer in or retailer of foreign or British spirits in the same house or premises, or in any other house or premises within five hundred yards, such dealer or retailer shall continue to make entry with the officers of Excise of every house, room, cellar, vault, or place made use of by him for the keeping or storing of or dealing in or retailing wine, on pain of forfeiting for every unentered house, room, cellar, vault, or place, fifty pounds, together with all wine and other liquors which may be found therein; and it shall be lawful for any officer of Excise at any time to enter into any house, room, cellar, vault, or place used by any such dealer or retailer for keeping or storing, dealing in or retailing wine, and to examine all wine therein."

Permits not required, &c.

Sect. 5. "That so much of any act or acts as relates to the requiring of permits for the removal of wine shall be and the same is hereby repealed."

Act not to affect licences for dealing in wine.

Sect. 6 provides, "That nothing is this act contained shall extend, or be construed to extend, to affect the duties on licences required to be taken out by dealers in and retailers of wine; but that every dealer in and retailer of wine shall take out a licence or licences, and pay for the same in the same manner as if this act had not been passed."

(*a*) To be increased at the rate of 5*l.* per cent. under the powers of the 3 Vict. c. 17.

3. *Proceedings, &c. before justices, &c.*

III. The Practical Proceedings before Justices relating to the Excise Laws.

The 7 & 8 Geo. IV. c. 53, in part repealed and in other parts amended by 4 & 5 Will. IV. c. 51, and again further amended by the 4 & 5 Vict. c. 20, regulate the proceedings before justices of the peace for penalties and otherwise under the Excise laws. The 7 & 8 Geo. IV. c. 53, s. 61, enacts, that the proceedings for penalties shall be instituted by order of the commissioners of Excise or Customs, and who supply their officers with proper forms of information, summonses, convictions, and warrants, so that the justices incur no trouble or responsibility. It may be useful, however, here concisely to state the course of proceeding as prescribed by the above acts, and show the forms usually adopted. Justices of the peace will do well carefully to examine the above acts, directions, and forms.

This subject may be subdivided under the following general heads:—

I. *Proceedings for Penalties and Condemnation of Seizures,* p. 996.
II. *Proceedings to recover Excise Duties,* p. 1008.
III. *Proceedings for Penalties on immediate Arrest of Persons found employed in unentered Excise Manufactories,* ibid.
IV. *Of Search-Warrants and Writs of Assistance,* p. 1009.
V. *Of Overcharges and Relief,* p. 1012.
VI. *Forms of Proceedings,* ibid.

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1. Proceedings for Penalties and Condemnation of Seizures.

This head may be subdivided as follows:

(1). *Within what Time to prosecute,* p. 996.
(2). *By whom Information to be exhibited, and Conduct of Officers,* p. 997.
(3). *Against whom,* p. 998.
(4). *Before whom,* ibid.
(5). *The Information itself,* p. 999.
(6). *Summons and Process thereon,* p. 1000.
(7). *Apprehension, Appearance, or Default,* p. 1001.
(8). *Evidence, and Hearing of Information, and the Defence,* ibid.
(9). *Proceedings on hearing Information,* p. 1002.
(10). *Form and Requisites of Conviction,* p. 1004.
(11). *Staying Proceedings and Nolle Prosequi,* ibid.
(12). *Appeals,* ibid.
(13). *Removal by Habeas Corpus and Certiorari,* ibid.
(14). *Proceedings in Execution,* p. 1005.
(15). *Liability of and Indemnity to Magistrates and Officers,* p. 1007.
(16). *Of the Expenses, Costs, and Rewards,* p. 1008.

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(1). *Within what Time the Prosecution to be commenced.*

(1). Within what time the prosecution to be commenced.

Every information for the recovery of a penalty or for the condemnation of any seizure must be exhibited within *four* calendar months next after the offence was committed, or the goods seized (*ante*, p. 588); and a notice in writing of the information having been so exhibited shall be given to the person against whom the same is exhibited within one week next after the exhibiting thereof (*ante*, p. 688), though the conviction need not be within that time. (*R.* v. *Barrett, Salk.* 383.) If goods are

found subjecting the party having them in his possession to a forfeiture, the day on which they are found will be presumed to be the day whereon such forfeiture was incurred (*a*).

3. *Proceedings, &c. before justices, &c.*

(2). *By whom Information, &c. to be instituted.*

(2). By whom information, &c. to be instituted, and conduct to be pursued by officer.

As well under 4 & 5 Will. IV. c. 51, s. 19, as under the 7 & 8 Geo. IV. c. 53, the information must be commenced and prosecuted by order of the commissioners of Excise, in the name of an officer of Excise (*ante*, p. 688); and, in Ireland or Scotland, by order of the commissioner or commissioners and assistant commissioners of Excise in Ireland or Scotland respectively, and in the name of an officer of Excise; except in cases where summary proceedings are instituted by or at the instance of any officer of Excise for the conviction, upon *immediate arrest* of any person under or by virtue of any act relating to the revenue of Excise (*ante*, p. 687). The averment in the information that it was duly authorized, need not be proved (*ante*, p. 690); and proof of acting as an officer of Excise is to be admitted sufficient proof of being such officer, without producing or proving his commission (*ante*, p. 625).

Clear instructions for officers of Excise, and for the assistance of justices of the peace, having been given by a gentleman of great intelligence and experience in the department of the Excise, and by the authority of the chief office; and, which, in the liberal conduct directed to be pursued by the officers against the party accused, do the highest credit to those gentlemen who now regulate this branch of revenue.

When any detection or seizure is made, it must, as soon as the facts can be carefully collected, be reported to the commissioners; and the officer by whom any detection or seizure is *reported*, is to state the facts perspicuously and *candidly*, not omitting the account given by the offender at the time of the detection or seizure, or at any other time, or the excuse or defence he actually does or is likely to set up to justify or palliate his conduct, in order that the commissioners may be the better able to judge of the course that it is expedient to adopt in every case.

To accomplish this object, the officer who reports is not merely to commence his report (except in common cases) with an account of the detection or seizure, but is to introduce the account of the detection or seizure, by stating such preliminary matter (particularly any fact or circumstance that will in the subsequent part of the report be referred to) as will make the case plain and easy to be understood.

These preliminaries having been complied with, the next (and a main object it is), in drawing up such a report, is to state every fact of the transaction which is the subject of the report, in succession, as it arose.

Particular care, in every report of this kind, must be taken to state accurately the time and place, and (besides the place) the full and proper name of the parish and county, shire, division, city, or town, when, where, and within which the transaction occurred.

These instructions, however, are not to supersede any directions as to any particulars required to be reported in any cases by former general letters or orders; but such letters and orders must be complied with the same as if these instructions had not been issued.

In selecting the officer whose name is used as the informer in the information, formerly, care must have been taken not to use the name of an officer who might be wanted as a witness at the hearing of an information; and it was a general rule, that neither the name of a supervisor or officer in whose division or ride the offence had been committed, or the seizure made, should be used. But it was provided by the 7 & 8 Geo. IV. c. 53, s. 75, (*ante*, p. 691), that, upon the trial or hearing of any information, or other legal proceeding, for the recovery of any penalty incurred, or for the condemnation of any goods seized or forfeited under any Excise law, any officer of the Excise, or other person entitled to any

(*a*) *R.* v. *Bass*, 5 *T. R.* 251.

3. *Proceedings, &c. before justices, &c.*

share of the penalty or seizure, shall be a competent witness. Therefore, an officer may be an informer, and also a witness.

The 4 & 5 Will. IV. c. 51, s. 22, (*ante*, p. 693), enacts, that in case of the death, removal, or absence of any officer of Excise, in whose name any information may have been exhibited, the proceedings may be carried on by any other officer.

(3). *Against whom an Information may be laid.*

(3). Against whom an Information may be laid.

The same law as prevails in case of offences against the laws of Customs, would prevail against offenders under the Excise laws. Therefore infants (*ante*, p. 664) and married women (*ante*, p. 665, note (*a*)) are liable; a master is liable for his servants' crimes committed in the course of his employ (*ante*, p. 600); and partners are liable for the acts of each other (*Ibid.*); and several persons may be proceeded against jointly or severally (*Ibid*).

(4). *Before whom it is to be laid.*

(4). Before whom it is to be laid.

The 7 & 8 Geo. IV. c. 53, s. 128 (*ante*, p. 614), and 4 & 5 Will. IV. c. 51, s. 19 (*ante*, p. 615), direct that all penalties, incurred under any act relating to the *revenue of Excise*, shall be recovered as described by section 65; viz. when the offence is committed, or the person committing the same is found, or the goods are seized, in any part of the United Kingdom, *out* of the limits of the chief office of Excise in London (comprising only London and Westminster, Southwark, and the suburbs thereof, and parishes within the weekly bills of mortality, with the parishes of St. Mary-le-Bone and St. Pancras (*a*) in Middlesex), by *information* before a *justice of the peace* for the place where the offence was committed, or the offender found, or goods seized (s. 65, *ante*, p. 687).

But the information must not be laid before a justice of the peace who is a trader, subject to the Excise laws, in any case which relates to the particular trade or business of such justice, or in any case in which he is in anywise as such concerned or interested; for otherwise the proceedings are declared to be void (*ante*, p. 689, s. 68).

The information may be exhibited to, and the summonses and subpœnas signed and issued by, *one* or more of her Majesty's justices of the peace; but it will generally be found convenient to prepare the information, summonses, and subpœna, in the singular number, and present them *to one justice*, if one can be conveniently found; but if at any time that should not be the case, the justices of the peace, or any two or more of them, in the several counties, shires, divisions, cities, towns, and places, throughout the United Kingdom, are, by the 7 & 8 Geo. IV. c. 53, s. 67 (*ante*, p. 687), required to meet once in every three calendar months, in their respective jurisdictions, or oftener, if there shall be occasion, to receive, hear, adjudge, and determine all matters and things brought before them, relating to the revenue of Excise, and all informations exhibited in respect of any penalty incurred, or the condemnation of any goods seized, as forfeited by any act relating to the revenue of Excise (s. 65, *ante*, p. 687).

And it is particularly provided, that if it shall happen that any justice or justices of the peace, before whom any such information shall have been exhibited, or before whom any proceedings shall have been had upon any such information, shall *die*, or be absent at any time after the exhibition of the information, and before the defendant shall appear or plead to such information, or before any judgment shall be thereupon given, or before any judgment thereupon given shall be duly executed, so that the further attendance of any such justice or justices thereupon cannot be procured, any other justice or justices of the peace, within the same jurisdiction, may act therein, for and in lieu of the justice or justices of the peace so dying or absent, in all respects relating to such

(*a*) 5 Geo. IV. c. 75.

information, and the due completion of the proceedings thereupon, in the same manner as if the information had been at first exhibited before such *other* justice or justices respectively (s. 67, *ante*, p. 689).

3. *Proceedings, &c. before justices, &c.*

Reference to former general powers of justices.

The act (sec. 67) further provides, that all powers and authorities, rules and regulations, given and granted by any act of parliament relating to justices of the peace, or to constables or other officers, acting under their authority, respecting summary proceedings (except altered by or repugnant to it, which are by section 127 repealed), shall be enforced, and shall be applied and executed for the conviction of any person prosecuted by order of the commissioners of Excise, or the commissioner or commissioners and assistant commissioners of Excise in Scotland or Ireland respectively, for any penalty incurred by such person, under any act relating to the revenue of Excise, and for the levying of any such penalty, or for the imprisonment of any such offender, in the same manner as if such powers and authorities, rules and regulations, were repeated and contained in that act (*ante*, p. 689, and see s. 127, *ante*, p. 614).

(5). *Of the Information and Requisites.*

(5). Of the information and requisites.

If, upon consideration of the report, the board order proceedings either for the recovery of a penalty or the condemnation of a seizure, or both, before justices of the peace, and an order is received for that purpose, an information must be carefully prepared, in the name of an officer of Excise, from the act of parliament referred to in the order of the commissioners, and the instructions contained in such order.

We have before observed upon some of the requisites of the information, and have seen that it should be in the name of an officer of Excise, and shew that it has been instituted by order of the commissioners of Excise or Customs (s. 61, *ante*, p. 686). It may now be in the name of an officer who is to give evidence in support of the information (*ante*, p. 691). It has been said that it need not be in writing, but, from the language of the act, it should seem that it must be in writing (see ss. 65, 66, 71, &c., *ante*, 687 to 691).

It should state the day on which it is exhibited, in order that it may appear to have been within the limited time.

It should allege that the offence complained of was committed within *four* calendar months last past, to wit, on, &c.; but, to support such statement or allegation, it is not necessary to prove that the offence was committed on the very day stated in the information; and proof that it was committed at any time within the four months will suffice.

So, with respect to quantities and numbers, certain quantities and numbers must be stated in the information; but proof of more or less will suffice: though, if the quantity and number proved should be *more and greater* than stated in the information, the latter can only, on the hearing, be condemned.

The information must not state the offence in the *alternative;* and, if a conviction be in the alternative, viz. that the defendant did sell beer *or* ale, it will be quashed, and will not be helped by the evidence applying to the sale of beer only (*R.* v. *North*, 6 *D. & R.* 143; 3 *M. C.* 38).

One information may contain *several counts*, or different ways of stating the same offence, or different offences arising out of one and the same transaction; but the object of such counts, in general, is not to inflict a number of penalties on the defendant, but to prevent the ends of justice from being defeated, which, if only one count was inserted, might sometimes be the case; and, in general, the crown will be satisfied with a judgment on the count which, after hearing the evidence, appears most satisfactorily proved, or the ends of justice require, though it may sometimes happen that the crown may think it necessary to press for two or more penalties.

3. *Proceedings, &c. before justices, &c.*

One information may also contain counts for *separate offences*, committed on different days by the same person or persons.

And if two or more persons are jointly engaged in any illicit transaction against the Excise laws, and a penalty is imposed upon every person committing the offence by which such penalty is incurred, such several persons jointly and severally incur every such penalty, and may be proceeded against jointly or severally for the recovery thereof, as may be deemed expedient (s. 70, *ante*, p. 690).

Some forms of informations in different cases will be found in the collection of forms under the last division of this subject. The proper forms are always provided by the officers to the commissioners of Excise and Customs.

(6). *Of the Proceedings upon the Information: viz. Notice, Summons, &c.*

(6). Of the proceedings upon the information, viz. notice, summons, &c.

The 7 & 8 Geo. IV. c. 53, s. 65 (*ante*, p. 687), and 4 & 5 Will. IV. c. 51, s. 19 (*ante*, p. 688), we may remember, enact that a *notice in writing, of the information* having been exhibited, shall be given to the person or persons against whom the same shall have been exhibited, for the penalties incurred for such offence, or to the claimant of the goods alleged to have been forfeited, *within one* week after such information shall have been exhibited; and the commissioners of Excise or justices are to *summon* the defendant or claimant to *appear* and *plead to*, and *attend the hearing of*, such information, at a stated time and place, and which summons shall be served or left *fourteen* days (or by 4 & 5 Will. IV. c. 51, s. 19, *ten days*) before the specified time.

Except where the information is exhibited for the recovery of double duty, or the condemnation of seizures from persons unknown, and no one appears to claim the same; in which case other provisions are made (*ante*, p. 688).

The form of summonses will be found under the sixth head, *post.*

Service of summons.

The information being exhibited to, and the summons issued by, the justice, the summons must be served within *one* week *after* the information is exhibited, and *ten* days at the least before the time appointed in such summons for the hearing; except in cases of double duty and seizures from persons unknown, not claimed (4 & 5 Will. IV. c. 51, s. 19, *ante*, p. 688).

If the information is exhibited for the recovery of double duty, service of the summons *twelve hours* before the time appointed in such summons for the hearing of the information is sufficient; and if for the condemnation of seizures not claimed, eight days' notice given in the manner hereinafter stated is declared to be sufficient. (*Ibid.* p. 688).

With respect to the mode of the *service of the summons*, in all cases it shall be deemed and taken to be a sufficient delivery and service of any such notice and summons if a copy of the same be left at or upon the place used or occupied by any such person or persons respectively for carrying on his or their trade or business, or at the building or place where any such offence shall have been committed, or such seizure made, or at the place of residence, or with the wife or child or servant of any such person or persons, the same being directed to such person or persons by the right or assumed name or names of such person or persons: or where any such offence shall have been committed or discovered in transit, or any seizure made in transit, and the place of business or residence of the offender shall be unknown to the person discovering such offence or making such seizure, it shall be sufficient if such notice and summons, or a copy thereof, be affixed at or upon such conspicuous part of the office of Excise next to where such offence shall have been committed or discovered, or seizure made, directed to such offender or offenders by his or their right or assumed name or names, if the same shall be known to the prosecutor, and if not known, without any name or names. (4 & 5 Will. IV. c. 51, s. 19, *ante*, p. 688).

3. *Proceedings, &c. before justices, &c.*

Cattle and perishable goods.

Where any horses or other cattle, or any goods of a perishable nature, are seized by any officer of Excise, as forfeited by any act of Parliament relating to the revenue of Excise or Customs, the commissioners of Excise, or the commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, are authorized to order any such seizure to be delivered up to the claimant thereof, upon his entering into a bond to his Majesty in the penalty of double the value of the horses or other cattle or goods delivered up, with a condition thereunder written, that such bond shall be void upon payment of the appraised value of such horses or other cattle or goods, on the condemnation thereof. (s. 94, *ante*, p. 681).

If no claimant of any such horses or other cattle, or goods of a perishable nature, appears, or if appearing he refuse or neglect to enter into such bond, the commissioners of Excise, and commissioners and assistant commissioners of Excise in Scotland and Ireland respectively, are authorized, at any time after the expiration of fourteen days from the making of any such seizure, to order and direct the sale of all such horses or other cattle, or goods, at public auction, notwithstanding the condemnation thereof has not at the time taken place. (*Ibid.* p. 681).

If any such horses or other cattle, or goods, shall afterwards be ordered to be restored without any proceeding being instituted for the condemnation thereof, or if instituted before the same are condemned, or if, upon the hearing for the condemnation thereof, the decision thereupon is in favour of the claimant, the appraised value of such horses or other cattle, or of such goods, or the proceeds of the sale thereof, at the election of the claimant, shall on demand thereof be paid to him, together with such further reasonable sum by way of compensation for the loss sustained by reason of the seizure, detention, and sale of such horses or other cattle, or goods, as the commissioners of Excise or commissioner and assistant commissioners of Excise in Scotland and Ireland respectively, shall think fit. (*Ibid.* p. 681).

If the proprietor or claimant of any such horses or other cattle, or goods, accepts such appraised value or proceeds of sale, together with such further sum as may be offered by the directions of the commissioners, or commissioner and assistant commissioners of Excise, he shall not have or maintain any action or suit for any recompense or damage on account of such seizure, detention, or sale. (*Ibid.* p. 681).

(7). *Of the Arrest, Apprehension, Appearance, or Default.*

(7). Of the arrest, apprehension, appearance, or default.

Under the Customs laws, an arrest in the first instance is given by express enactment. And persons liable to arrest under the laws of Excise, but not detained at the time, may be afterwards arrested by any officer of Excise and taken before a justice, 4 & 5 Will. IV. c. 51, s. 25, (*ante*, p. 707). And though, in general, under the *Excise* laws, the proceedings before commissioners and magistrates should be by *summons*, (*ante*, p. 687), yet, in some cases, an immediate apprehension is allowed,—as, where persons are found employed in unentered Excise manufactories, when any Excise officer may arrest him and convey him before a magistrate, who may convict him, (s. 33, *ante*, p. 672); and sheriffs are to grant warrants or writs of *capias* out of the Court of Exchequer, (s. 95, *ante*, p. 701); and where no sufficient distress can be found to pay the penalty, a warrant against the person may be issued, (s. 80, *ante*, p. 694).

(8). *Of Summoning Witnesses to attend on Hearing of the Information.*

(8). Of summoning witnesses to attend on hearing of the information.

If the attendance of any witnesses who will not otherwise attend should be required, then, under the 7 & 8 Geo. IV. c. 53, s. 74, the justice or justices before whom any Excise information or any matter or thing under any act relating to the revenue of Excise shall be judicially brought, are authorized and required to summon every person (other

3. *Proceedings, &c. before justices, &c.*

Summons for witnesses on subpœna.

than the person against whom such information is exhibited), in whatever part of the United Kingdom any such person so summoned shall then reside or be, to appear before the justices, who are to hear, adjudge, and determine such information, matter, or thing, at a certain time and place to be specified and set forth in such summons, to give evidence upon oath of the truth of any facts alleged in such information, or touching or relating thereto, or to any matter or thing judicially brought before them, (*ante*, p. 691).

And every person so summoned, and having the reasonable expenses for such attendance tendered to him, who neglects or refuses to appear according to the exigency of such summons, or who, having appeared, refuses to take oath or (if a Quaker) to affirm, or refuses to give evidence or to answer according to the best of his knowledge and belief any legal question when required, incurs the penalty of 50*l.* (*Ibid.* p. 691).

The form of summons or subpœna for witnesses which may be used, will be found under the last division, *post.*

(9). *Proceedings on Hearing Information.*

(9). Proceedings on hearing information.

Hearing.

At the time and place appointed for hearing the information, the prosecutor and proper collector or supervisor should attend, with the witnesses, before two justices of the peace at least; and thereupon the defendant should be called in to appear, and if he do not, the officer of Excise, or other person who served the summons or affixed the notice, should be sworn, and prove the time, place, and mode of serving (*ante*, p. 688) or affixing it, and then the other witnesses for the Crown, after being duly sworn (or in case of a Quaker having taken his affirmation), are examined in order to prove the charge contained in the information, and the justices are then to call on the defendant for his defence, and swear and examine his witnesses, and give judgment, without regarding any defects of form in the information, or in any proceedings thereon (s. 73, *ante*, p. 691); and, in all trials of seizures, the seizure, and form and manner of making it, are to be taken to have been as alleged in the information, without requiring any evidence thereof; and all judicial persons before whom any such seizure shall be brought to hearing, shall proceed to a determination on the merits without inquiring into the fact, form, or manner of making the seizure. (s. 64, *ante*, p. 681).

If the defendant be in prison, a copy of the information (besides his being summoned) must be delivered for him to the gaoler, and such service proved at the hearing. (s. 77, *ante*, p. 692).

If defendant appears, how to proceed.

If the defendant appear, the information is to be read to him; and if he plead guilty, the justices will, of course, give judgment for the Crown. If not guilty, the several witnesses for the Crown should be called, sworn, and examined, the defendant being present and being informed, at the end of the examination of each witness for the Crown, that he is at liberty to cross-examine him.

When the case on the part of the Crown is closed, the defendant should be called upon for his defence; and after stating, if he pleases, the nature of his defence to the justices, his witnesses should be examined in the same manner as the witnesses have been for the prosecution; and then the justices, after hearing any observations that the prosecutor has to make on the case by way of reply, are to give judgment.

The collector or supervisor, as well as the defendant, should also call in every case all the witnesses that he has present, though at the time it may appear unnecessary, because, in case of appeal, it is enacted (by 7 & 8 Geo. IV. c. 53, s. 84), that no witnesses but those who have been sworn and examined, or tendered for examination (4 & 5 Will. IV. c. 51, s. 24, *ante*, p. 696), on the hearing of the information, shall be examined on the appeal; it will not, however, be necessary to examine every witness at length, when several speak to the same facts, but merely to have them sworn and examined shortly in confirmation of the other witnesses.

3. *Proceedings, &c. before justices, &c.*

Who are witnesses, and what evidence to be adduced by prosecutor, and what by defendant.

The informer, officers, and any other persons who may be entitled to the whole or any share of the penalties sought to be recovered, or of the goods to be condemned, are now authorized and required, notwithstanding their interest, to be admitted to give evidence, and to be deemed and taken to be competent witnesses (s. 75, *ante*, p. 691); though it was formerly otherwise.

Quakers are competent witnesses for and against the prosecution, and are to affirmed. (s. 30, *ante*, p. 671).

As a general rule, the prosecutor should be prepared to prove every material allegation in the information. But, under several provisions, in the Excise laws, there are many formal and indeed substantial proofs dispensed with, and in other cases the *onus probandi* of the converse of the averments is thrown on the defendant.

Thus, it is provided, that if, upon the trial of any information, or in any other legal or judicial proceeding, any question arises touching or concerning the keeping of any office of Excise, or whether any person is a commissioner or assistant commissioner of Excise, or a collector, or other officer of Excise, or commissioned or appointed to act as such, evidence of the *actual keeping* of such office of Excise, or that such person is, or at the time in question was *reputed* to be, such commissioner or assistant commissioner, or such collector or other officer, or does or did then *act* as such commissioner or assistant commissioner, or as such collector or other officer, so commissioned and appointed, shall in every such case be admitted, and be deemed and taken to be sufficient and legal proof of such facts respectively, without producing or proving the particular commission, appointment, or other authority, whereby such person is or was commissioned or appointed to be such commissioner or assistant commissioner, or such collector or other officer, unless by other evidence the contrary be made to appear. (s. 17, *ante*, p. 625).

So, there is an enactment as to what shall be deemed sufficient proof of entry of premises, when that shall come in question; so, on all trials of seizures, the seizure shall be taken to have been as alleged in the information (*ante*, p. 662).

So, the allegation that the commissioners ordered the prosecution need not be proved (s. 71, *ante*, p. 690); unless, however, the defendant shall prove to the contrary. (3 & 4 Will. c. 53, s. 116, *Ibid.*)

So if, upon any information for the recovery of any penalty, or for condemnation of chattels seized as forfeited by any act relating to the Excise or Customs, any question is made or arises whether any duty of Excise or Customs has been paid upon or in respect of the goods or commodities in such information mentioned, or whether such goods, commodities, or chattels, are of such sort or kind as in such information alleged, the proof of the payment of such duty, or that such goods, commodities, and chattels respectively, are not of such a sort or kind as stated in the information, lies upon the proprietor or claimer thereof. (s. 76, *ante*, p. 692).

If the justices give judgment for the Crown, and the defendant prays a *mitigation* of the penalty awarded against him, the justices may, if they think fit (except in cases where there is or shall be any provision that no mitigation shall be made by them), reduce it to not less than one-fourth part thereof; and payment of such mitigated sum is a discharge of the penalty for the offence of which the defendant has been convicted. (s. 78, *ante*, p. 693).

The 4 & 5 Will. IV. c. 51, s. 20, we have seen contains a general provision that commissioners of Excise and justices shall not be authorized to mitigate the penalty of double duty for or on payment of Excise duties, but enjoins that they shall convict on double duty, when forfeited by law. (*Ibid.*)

It is not necessary that the justices should be attended by a clerk; but it is absolutely necessary that they, or some person on their behalf, should carefully take down in writing, at the time each witness gives

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his evidence, if not the very words, the substance, as well as the substance of the defence advanced by the defendant; and that such minutes be carefully preserved, as they are always useful for the satisfaction and justification of the justices, and may, in many cases, be subsequently required, in order to draw up the conviction as directed by the statute (*a*).

(10). *Form and Requisites of Conviction.*

(10). Form and requisites of conviction.

Although defects in form in convictions are aided and may be amended by the justices or commissioners of appeal (s. 72, *ante*, p. 691, and s. 82), still, however, the conviction should be correct in matters of substance (*b*). It may be framed as directed by the 3 Geo. IV. c. 23 (*c*). Mere minutes will in the first instance suffice, and it may be drawn up in full form afterwards (*d*). It must not be in the alternative (*e*).

(11). *Of Staying Proceedings by the Attorney-General or Commissioners of Excise.*

(11). Staying proceedings by the attorney-general or commissioners of Excise.

The attorney-general may enter a *nolle prosequi*, or otherwise stay any prosecution for penalties, or condemnation of any seizure, if he be satisfied that the penalty or forfeiture was incurred without any intention of fraud, or of offending against any law of Excise (s. 97, *ante*, p. 699). The application to the attorney-general should be supported by petition and affidavit (*f*).

So, a party threatened with a prosecution, or already proceeded against, may apply to the *commissioners* of *Excise*, under the 7 & 8 Geo. IV. c. 53, ss. 98, 99, (*ante*, p. 699), by *petition*, supported by *affidavit*, and pray that they will be pleased to order that no prosecution be instituted, or that the prosecution be stayed, either altogether or upon terms; and the commissioners may order such stay of proceedings, or restoration of the goods absolutely or conditionally, on such terms as they may think just. (s. 98, *ante*, p. 700).

(12). *Of Appeals.*

(12). Appeals.

If either party be dissatisfied with the decision of the justices, he may appeal to the barons of her Majesty's court of Exchequer. (4 Vict. c. 20, s. 26, *ante*, p. 694).

And one or more of the said barons are required, upon being served with notice of such appeal, at such place and at such time as he or they shall appoint, to hear, adjudge, and finally determine such appeal: and the baron or barons by whom such appeal shall be heard, &c., have the same powers and authorities as by the former acts were given to the commissioners of appeal: all the enactments, rules, regulations, and provisions in such former acts, except as altered by the 4 Vict. c. 20, apply to them. (*See ante*, pp. 695, 696).

(13). *Of the Removal by Habeas Corpus and Certiorari.*

(13). Removal by *habeas corpus* and *certiorari*.

No *certiorari* or other process lies at the suit of any defendant to supersede or affect any proceeding by commissioners of Excise or justices of the peace (s. 79, *ante*, p. 694). It was held, on the prior acts, that no *certiorari* to remove a conviction under the Excise laws, can be sustained (*g*). But some of the acts before the 7 & 8 Geo. IV. c. 53, s. 79, did not take the *certiorari* away (*h*).

(*a*) 3 Geo. IV. c. 23, and 4 & 5 Will. IV. c. 51, s. 24, as to taking down the evidence of witnesses tendered for examination. (*Ante*, p. 696).

(*b*) *Rex* v. *Hanson*, 4 *B. & Ald.* 519.

(*c*) See form, *post*.

(*d*) See *ante*, p. 607; *Rex* v. *Barker*, 1 *East*, 186.

(*e*) *Rex* v. *J. North*, 6 *D. & R.* 143.

(*f*) See a form of petition and affidavit, on application to the commissioners of Excise, *post*, which may be readily applied.

(*g*) *R.* v. *Whitehead*, *Dougl.* 549.

(*h*) *Paley*, 489.

A *habeas corpus* lies whenever a defendant is illegally imprisoned; and therefore, if he be confined under a conviction totally defective, he may by *habeas corpus* be discharged. (*See ante*, p. 609).

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(14). *Of the Proceedings in Execution.*

(13). Of the proceedings in execution.

In no case in which a penalty is awarded, and such penalty is not immediately paid, should the collector, supervisor, or any other officer, take security for the payment of such penalty without the express orders of the commissioners.

Officer ought not to take security for penalty.

If, on the hearing of an information, the justices give judgment for the Crown (and such judgment is not appealed against, or if appealed against, is affirmed by the court of appeal), the next step is to *enforce* it.

If the judgment is for *condemnation of goods* seized as forfeited, the justices of the peace are required to grant a warrant under their hands, to any officer of Excise, for the sale of the goods condemned. (s. 86, *ante*, p. 696).

If the judgment to be enforced is for a full or mitigated *penalty*, the justices are authorized and required to grant a warrant to an officer of Excise, authorizing him to levy the penalty, or so much thereof as shall not have been satisfied, upon the goods of the defendant, and either to detain and keep them where found, or remove them to the next office of Excise.

The judgments are to be enforced by the *justices* of the peace at the *general quarter sessions*.

Thus, if it was for condemnation of goods, at the general quarter sessions, on appeal, they are required to grant a warrant under their hands, or under the hands of any two of them, to any officer of Excise, for the sale of the goods condemned. (s. 87, *ante*, p. 697).

Where the judgment is for any penalty, they are required to apply the money which shall have been deposited, as before stated (*ante*, p. 698), in satisfaction of such judgment; and, if not sufficient, they are to grant a warrant under their hands, or under the hands of any two of them, to any officer of Excise, requiring him to levy the penalty or balance upon the goods of the offender, and either to detain or keep the goods where found, or remove them to the next office of Excise (s. 87, *ante*, p. 697).

In all these cases, it will be observed, the statute directs the warrant to be under hand or hands of the justices, &c.: it need not, therefore, be under seal (*a*).

One warrant for several penalties imposed by different acts suffices (*b*).

The goods upon which such levy is made are to be sold, as soon as conveniently may be, after a certain time to be limited in the warrant (not less than four days, nor more than eight days), unless the penalty for which the levy is made be previously paid. (s. 88, *ante*, p. 687).

The officer making the levy is empowered to deduct out of the money arising by the sale—

1st. The penalty.—And, 2ndly, All reasonable charges and expenses attending the levy.

The overplus is to be returned to the proprietor of the goods, or the person legally entitled thereto. (s. 89, *ante*, p. 687).

The officer, if required, must shew the warrant to the person upon whose goods the levy is made, and suffer him to take a copy of it, and the warrant itself is of the same force and effect, in all respects, as a writ of *fieri facias* issued out of the Court of Exchequer in England, for the recovery of any debt due to his Majesty. (*Ibid.*)

Goods liable to an Excise duty, and the materials, vessels, &c., subject to arrears of duty and penalties.

All goods and commodities subject to duties of Excise, and all materials, machinery, vessels, implements, and articles used in the manufacture are, by 4 Vict. c. 20, s. 24 (*see ante*, p. 670), to be liable for all

(*a*) 3 *Lev.* 205; *Willes*, 411; *Paley*, 485. (*b*) *Paley*, 487.

3. *Proceedings, &c. before justices, &c.*

duties, arrears, and penalties incurred whilst in the possession of the trader; provided, that where goods duly charged with duty have been sold and delivered in the fair and ordinary course of trade, the liability is in such case to cease.

Body-warrant.

For want of sufficient goods to satisfy the penalty, with the charges and expenses, and on a *return in writing* made upon the levy-warrant by an officer to whom such warrant is directed, to the persons by whom such warrant has been granted, or any one or more of the justices of the peace within whose jurisdiction respectively any such warrant shall have been issued, that such officer cannot find within the jurisdiction in which such warrant shall have been issued any goods of the defendant whereon the same can be levied (*a*); or on a return, that part of such penalty, charges, and expenses have been levied or paid, and that such officer cannot find any further goods of the person against whom such warrant has been granted (beyond the goods already seized and sold) within the jurisdiction in which such warrant has been issued whereupon the residue of such penalty, charges, and expenses can be levied, the persons by whom such warrant was granted, or any one or more of the justices of the peace to whom respectively such return shall have been made, are respectively authorized and required thereupon to grant a warrant to any officer of Excise to arrest and convey the defendant to the common gaol or house of correction within his or their jurisdiction respectively, and then to deliver the defendant, with a duplicate of such warrant for arrest (or body-warrant), to the gaoler or keeper of such gaol or house of correction, there to remain and be kept until satisfaction be made of such judgment, or until he shall be ordered by the commissioners of Excise or the commissioner and assistant commissioners of Excise in Scotland and Ireland respectively, to be liberated. (s. 90, *ante*, p. 698).

A body-warrant of this description must not be executed on a Sunday (*c*).

Fresh levy-warrant after body-warrant.

Where any goods of the defendant are discovered after the execution of the body-warrant, any one or more justices are required (notwithstanding the granting of such warrant of arrest or body-warrant) to grant a fresh warrant to any officer of Excise to levy upon the goods so found, any penalty, charges, or expenses for which the former levy-warrant may have been granted, or to levy so much thereof as may not have been before paid; and, upon payment and satisfaction thereof, the warrant for arrest or body-warrant shall be discharged, and the defendant be forthwith liberated out of custody. (s. 91, *ante*, p. 698).

Backing warrant.

Where any warrant (whether levy-warrant or body-warrant) has been granted, and cannot be executed by reason that sufficient distress or that the defendant cannot be found within the limits of the jurisdiction of the commissioners or justices in which such warrant has been issued, one or more of the justices of the peace for any other county or place within the United Kingdom, are authorized and required to endorse his or their name or names respectively upon such warrant; and such warrant and endorsement thereon is a sufficient authority to the officer of Excise to whom such warrant is directed, or having the execution thereof, to execute the same in such other county or place, and to levy the penalty for which the warrant shall have been so granted, or so much thereof as may not have been before paid, upon the goods of the defendant which shall be found within the jurisdiction of the justice or justices endorsing such warrant, or to arrest and convey the defendant to the common gaol or house of correction of the county or place where such warrant shall have been endorsed, there to remain until delivered as before directed (s. 92, *ante*, p. 699).

The justice endorsing any such warrant is by the act saved harmless

(*a*) It seems that a levy-warrant for goods must therefore be first issued. (*Paley*, 482).

(*b*) *Paley*, 489; 1 *T. R.* 265.

and indemnified from any consequences arising therefrom, and the original maker of the warrant remains responsible for its legality. (s. 92, *ante*, p. 699).

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How goods are to be sold.

All goods seized as forfeited by virtue of any act of Parliament relating to the revenue of Excise, after condemnation (such cases only excepted for which other directions by any act relating to the revenue of Excise may be specially given), are to be *publicly sold* to the best bidder, at such time and place, and in such manner, as the commissioners of Excise or the commissioner and assistant commissioners of Excise in Scotland and Ireland respectively order, under such rules and provisions as are by any act of Parliament in that behalf made and directed. (s. 100, *ante*, p. 702).

But no goods subject to any duty of Excise or Customs, and for which every such duty shall not have been paid, which shall be ordered to be sold under any act relating to the revenue of Excise, or the sale of which shall be directed under any other act of Parliament, shall be sold for home consumption at a less price than shall be equal to the amount of the duty which shall not have been paid. (s. 101, *Ibid.*)

All goods for which, at any sale so ordered or directed, a price is not offered equal at least to the amount of the duty, and all condemned goods the importation of which is or shall be prohibited, shall be forthwith destroyed or sold for exportation, or applied and disposed of to such public use as shall be ordered by the Lords of the Treasury. (*Ibid.*)

Costs and expenses.

All *costs and expenses* attending the seizure, detention, custody, removal, prosecution, condemnation, and sale of any goods whatsoever, forfeited by any act of Parliament relating to the revenue of Excise are (such cases only excepted for which other directions are by any act of Parliament relating to the revenue of Excise specially given) to be paid out of the gross proceeds arising from the sale thereof, whenever the same are sold; and, if not sold, but the same are destroyed or otherwise disposed of, such costs and expenses are to be paid out of the revenue of Excise. (s. 102, *Ibid.*)

Distribution of penalties and forfeitures, half to the king, and the other half to the officer or informer.

All penalties and forfeitures incurred and recovered under any act of Parliament relating to the revenue of Excise (such cases only excepted for which other directions are specially given), are, after deducting of all costs and expenses incurred relating thereto, to be distributed, one moiety to his Majesty, and the other to the officer of Excise, or the person who shall discover, inform, or sue for the same. But, on proof of any officer acting collusively, the commissioners may direct his share to be forfeited. (s. 103, *ante*, p. 703).

(15). *Of the Liability and Indemnity to Magistrates and Officers.*

(15). Liability and indemnity to magistrates and officers.

We have seen, that the general enactments in the 7 & 8 Geo. IV. c. 53, ss. 114 to 119, enact, that no action shall be commenced against any officer of Excise, or person employed in the revenue of Excise, &c., without first giving an explicit notice, in a certain form of the intended action. The action must be commenced within three months next after the cause of action had occurred. The venue must be laid in the proper county. The defendant may plead the general issue; and, if the plaintiff fails, the defendant is entitled to treble costs. The act also authorizes a tender of amends to be pleaded, or money may be paid into court; and if, on trial for seizures, the judge shall certify there was probable cause of seizure, the officer is not liable to any action, &c. (*ante*, p. 705). The constructions on this and on similar acts will be found *ante*, p. 610, &c.

An action against an officer for acting under any Excise warrant, or otherwise, in execution of his office, may be removed from the Court of Common Pleas, or any other court, into the Exchequer (*a*).

(*a*) *Liddon* v. *East*, 1 *Cromp. & Jer.* 12; *ante*, p. 683.

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(16). *Of the Expenses, Costs, and Rewards.*

(16) Expenses, costs, and rewards.

Expenses of prosecution before commissioners of Excise or justices may be ordered to be paid out of revenue.

The 4 & 5 Will. IV. c. 51, s. 21, enacts, that in any prosecution for recovery of any penalty incurred, or for the condemnation of any goods or chattels seized as forfeited, under any act of Parliament relating to the revenue of Excise, and carried on before the commissioners of Excise or any justices of the peace, the commissioners of Excise may order the expenses of such prosecution to be paid out of the revenue of Excise, and a sum of money to be paid to the officers concerned in such prosecution, or the persons through whose information the offence shall have been discovered or the seizure made, in the same manner as they are authorized to do in prosecutions carried on in the Court of Exchequer.

Sect. 14, we have seen, gives the commissioners of Excise power to reward officers detecting private manufactories.

II. Recovery before Justices of Excise Duties.

2 Recovery before justices of Excise duties.

It has been observed, that the prevention and punishment of *frauds* are material parts of the duty of an Excise officer; but the securing and recovering of *Excise duties* payable by persons subject to the Excise laws, is of still higher importance.

The 4 & 5 Will. IV. c. 51, s. 11, enacts, that Excise traders shall pay their duties at such time and place and to such person as shall be appointed, or upon demand made by order of the commissioners on pain of forfeiting double duty (*ante*, p. 669).

Provided, however, no person shall be compelled to go further than the next market town for making entries on payment of duties. (7 & 8 Geo. IV. c. 53, s. 26, *ante*, p. 669).

Proof of order.

The 7 & 8 Geo. IV. c. 53, s. 72 (*ante*, p. 690), enacts, that the letter or instructions officially received by the collector, or other officer of Excise, of the collection. district, or place in which the subject-matter of any such information, or other legal or judicial proceeding, may have arisen, for his direction and government, and in which such order is mentioned or referred to, and under which letter such officer shall have acted, shall be admitted to be sufficient evidence and proof of such order.

The 7 & 8 Geo. IV. c. 53, ss. 15 (*ante*, p. 624) and 26 (*ante*, p. 669), limits the distance that the trader may be required to go to pay such duties.

The above regulations are applicable to the whole of the United Kingdom; and if a trader out of the limits of the chief office of Excise does not pay the Excise duties charged upon him accordingly, he incurs the penalty of double the value of the duty (s. 11, *ante*, p. 669); and an information may be exhibited against him before the commissioners of Excise or justice or justices of the peace, four calendar months after offence committed, and the proceedings are to be conducted in the manner pointed out. (*ante*, p. 688, sect. 19 of the 4 & 5 Will. IV. c. 51).

III. Recovery of Penalties on immediate Arrest of Persons employed in unentered Excise Manufactories.

Mode of proving entry; no entry legal except in real owner's name penalties, &c.

Power is given to the officers of Excise immediately to arrest any persons found employed in unentered Excise manufactories, and to take them before a justice, who is forthwith to hear and determine the case, without the officer's waiting for an order from the commissioners of Excise, or the commissioner and assistant commissioners in Scotland and Ireland, to prosecute. (s. 61, *ante*, p. 686).

The 4 & 5 Will. IV. c. 51, s. 5, repealing the old, directs the present, by which entries are to be made. (See *ante*, p. 662).

And, by s. 33, where any officer of Excise shall find, in any private

or unentered place, manufacturing, or in the course of manufacturing, any goods or commodities in respect whereof any duty of Excise is or shall be imposed, or any materials or preparations for manufacturing any such goods or commodities, and shall at the same time discover in or about such private or unentered place any person knowingly aiding, assisting, or in anywise concerned in the manufacturing of such goods or commodities, every person so discovered shall forfeit 30*l.*, over and above all other penalties to which the proprietor of the same or the person in whose custody or possession the same shall be found, or by whom the manufactory of such goods or commodities may be carried on, is or may be subject and liable. (*Ante*, p. 672).

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Any officer of Excise and his assistants may arrest and detain every person so discovered, and convey him or her before one of his Majesty's justices, who, on confession or proof on the oath of one or more credible witness or witnesses made of such offence, may convict every person so discovered. (*Ibid.*) And the person so convicted shall, immediately on such conviction, pay the sum of 30*l.* into the hands of the officer who shall have conveyed such offender before such justice of the peace, to be paid to the commissioners of Excise, or the commissioner and assistant commissioners of Excise in Scotland and Ireland respectively, or to such persons as they may respectively appoint, to be applied in such manner as other Excise penalties are by that act directed to be applied. And on such offender neglecting to pay the said 30*l.*, the convicting justice is to issue his warrant to commit him to prison and hard labour for three calendar months, unless he pays in the meantime the said sum of 30*l.* And for a second offence upon a like conviction the offender shall forfeit 60*l.*, and in default of payment be committed for six months, or until the sum of 60*l.* shall be paid. (*Ibid.*)

Excise penalties to be distributed in moieties, between his Majesty and informer.

With a power, nevertheless, for the commissioners of Excise, or for the commissioner and assistant commissioners of Excise in Scotland and Ireland respectively, to order any person so imprisoned to be discharged, at any time before the term of his or her imprisonment shall have expired. (*Ibid.*)

On arresting such an offender, it is the duty of the officer forthwith to convey the offender before a justice of the peace for the place in which the offence has been committed, and when the justice is ready to hear the case, give information against the offender, and charge him orally with the offence imputed to him, and be prepared with his witnesses to support it.

The officer, and any other person, who may be entitled to the whole or any share of such penalty, shall, notwithstanding their interest, be admitted to give evidence. It is not incumbent on the officer to prove that the manufactory is not entered, but it lies upon the defendant (if such is his defence) to prove that it is entered. (s. 75, *ante*, p. 691).

If any question, or doubt, or dispute be made or arise, whether the person who arrested the offender and conveyed him before the justice, is an officer of Excise, it is, by the 7 & 8 Geo. IV. c. 53, s. 17 (*ante*, p. 623), enacted, that evidence that he is reputed to be or acts as an officer of Excise, shall be admitted, and deemed and taken to be sufficient and legal evidence thereof, without producing or proving the particular commission, appointment, or authority, whereby he is commissioned or appointed to be such officer, unless by other evidence the contrary be made to appear.

IV. Of Search Warrants and mode of obtaining same, and assistance of Peace Officers and others.

All goods, commodities, and chattels whatsoever, forfeited under or by virtue of any act of Parliament relating to the revenue of Excise, may, without special or particular warrant, be seized:—1st. By any officer of Excise.—2dly. By any person employed in the revenue of

4. Of search-warrants and mode of obtaining same, and assistance of peace officers, &c.

3. *Proceedings, &c. before justices, &c.*

Excise.—Or, 3rdly, By any person acting in the aid and assistance of any such officer or person so employed. (s. 64, *ante*, p. 677).

Amongst others, all goods and commodities subject to any duty of Excise, and all materials, utensils, and vessels, proper or intended to be made use of in the making thereof, removed or deposited, or concealed in any place, to defraud his Majesty of such duty, are forfeited; and in every such case, and in every case where any goods or commodities are forfeited by any law relating to the Excise, all the casks, vessels, cases, and other packages whatsoever, containing, or which shall have contained, such goods or commodities, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other cattle, and all things used in the removal, or for the deposit or concealment thereof, are also forfeited; and every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any such goods or commodities, forfeits treble the value thereof, or 100*l.* at the election of the commissioners of Excise or Customs, or of the commissioner and assistant commissioners of Excise or Customs in Scotland and Ireland, respectively, or the person who sues for the same. (s. 32, *ante*, p. 671).

Officers of Excise to have the like powers as officers of Customs.

Besides goods forfeited by any law of *Excise*, every officer of *Excise* has, and may use and exercise, all such and the like powers and authorities for the arrest and prosecution of any person, or for the search, examination, seizure, detention, removal, and prosecution of any vessel, boat, cart, carriage, or other conveyance, or any horse or cattle, or any foreign or imported goods or commodities whatsoever, forfeited under any act of Parliament relating to the revenue of the *Customs*, as are or shall be granted, or be used or exercised, in that behalf by any officer of the Customs. (s. 38, *ante*, p. 674).

But officer of Excise cannot of his own authority enter a place (not especially provided for by act), to search for suspected goods, but must make oath, and obtain a warrant.

This right of seizure, however, does not authorize any officer of Excise, or person employed in the revenue of Excise, or their assistant, to enter or go into, *of their own authority*, any place into which they are not otherwise legally authorized; and if any officer of Excise *has cause to suspect* that any goods or commodities, forfeited under or by virtue of any act of Parliament relating to the revenue of Excise, are deposited or concealed in any place to which he has no right of access, and such place is in any part of the United Kingdom out of the limits of the chief office of Excise in London, he may apply to any one or more of the justices of the peace for the county, shire, division, city, town, or place where he suspects such goods and commodities are deposited or concealed; and any one or more of such justices may, *upon oath* being made by such officer before him or them, *setting forth the ground of such suspicion*, if he or they judge it reasonable, by *special warrant* under his or their hands, authorize and empower such officer, by day or by night (but if between the hours of eleven of the clock at night and five in the morning, then in the presence of a constable or other officer of the peace), to enter into every such place where any such goods or commodities are suspected to be deposited or concealed, and to seize and carry away the same. (s. 34, *ante*, p. 673).

And the officer, in case of resistance, having such warrant, may break open any door, and force and remove any other impediment or obstruction to such entry, search, or seizure, and remove any other impediment or obstruction to such entry, search, or seizure, and removal.

What may be done under a writ of assistance.

In the late case of *The King* v. *Walls and another*, (1 *Bar. & Adol.* 166), the right of entry and search under a *writ of assistance*, and under the different modern provisions in the law relating to the Customs and Excise, was fully considered. The 3 & 4 Will. IV. c. 59, s. 61, empowers any officer of Customs, or person acting under the commissioners of Customs, authorized by writ of assistance, to enter any house, shop, &c. there to seize, and from thence to bring, any uncustomed or prohibited goods.

A writ of assistance was addressed to certain officers therein men-

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tioned, and to all other his Majesty's officers, ministers, and subjects in England and Wales; it set out the commission of the officers of the Customs, which empowered them to enter and search any house, shop, &c. where smuggled goods were, *or were suspected to be concealed*, to appoint officers, &c. and to do all other things necessary for his Majesty's service in such cases, according to law; and it commanded the several persons to whom it was directed to permit and suffer the commissioners of Customs, their deputies, servants, and officers, to enter and search the houses, shops, &c. where smuggled goods were, or were suspected to be concealed, and to do all things which ought to be done in that behalf, according to the commission, and to the laws of the realm; and all persons addressed by the writ were to assist in the execution of the premises.

It was held, that this writ did not confer a general and *absolute* authority to enter and *search* houses for smuggled goods; but that such entry and search must be justified by reference to the event, *or to probable cause:* and the evidence on those points, and whether there was reasonable ground to suspect a concealment of goods, being uncertain, a new trial was directed.

Instructions to be attended to before applying for a search-warrant.

The following judicious instructions have been given in a work before alluded to:—"When any officer of Excise, either from his own view, knowledge, or observation, or from information received from any other person, suspects that any goods or commodities, forfeited under any Excise law, are deposited or concealed in any place to which he has not access, he should make use of his best discernment by considering the fair weight of the circumstances which lead to his suspicions, and not conclude that, because from such circumstances it is possible that goods or commodities forfeited, may be deposited or concealed, they necessarily are so; or, because the informer gives a plausible account, that it must necessarily be true; but, by minutely interrogating him and entering into detail with him on the subject, so as to ascertain whether one part of it agrees with the other, endeavour to ascertain its truth or falsehood, and also learn his character and his connexion with the party against whom he gives information, and his motive and inducement to give such information, and whether revenge forms any part of it; and then, if upon turning all these things in his mind, the officer is, upon the whole, satisfied that his suspicions are true, then, and not till then, he should apply to a justice of the peace for a warrant. Every failure in a search under a warrant lowers, in a certain degree, if it does not disgrace, the unsuccessful officer, and brings odium and obloquy on the whole revenue."

If the justice applied to has no warrant of his own that he prefers, a warrant in the form presently given may be used; annexed to which is the formal part of the affidavit, to which must be added the grounds of the officer's suspicion; and, on the same having been sworn before the justice, he will, if he judges the suspicion reasonable, issue his warrant, directed to the officer by whom the affidavit is made.

Attendance of peace-officer.

If the warrant is executed between the hours of eleven of the clock at night and five in the morning, the presence of a constable or other lawful officer of the peace is necessary, (s. 34, *ante*, p. 673); and upon notice given or request made by any officer of Excise to any constable, headborough, or other ministerial officer of the peace, to go with him, as such Excise officer, and to aid and assist him as such officer of Excise, on his not going, or not aiding and assisting to the utmost of his power, he shall incur a penalty of 20*l*. (s. 16, *ante*, p. 674).

It cannot very well occur in executing a search-warrant, but it may in many other cases happen, that a constable, headborough, or other ministerial officer of the peace, who has begun to assist an officer of Excise in the execution of his duty, in a place where such officer has jurisdiction, may be taken in the progress of such assistance out of such

3. *Proceedings, &c. before justices, &c.*

place, and then he may continue his assistance into any other place, otherwise out of his jurisdiction. (s. 34, *ante*, p. 673).

And by the 7 & 8 Geo. IV. c. 53, s. 35, all justices of the peace, bailiffs, constables, and all his Majesty's officers, ministers, and subjects serving under his Majesty, by commission, warrant, or otherwise, are required to be aiding and assisting to every officer of Excise, in the due execution of any act or thing required and enjoined by any act of Parliament relating to the revenue of Excise to be done, and all such persons who so aid or assist are by the same act saved harmless. (*Ibid.*)

V. Of Overcharges and Relief.

5. Of overcharges and relief.

It sometimes happens that persons subject to the Excise laws are charged with, or have paid, more than by law they are liable to pay; and provision for relief, in such cases, in a summary way, is provided by the 7 & 8 Geo. IV. c. 53, s. 120, and other acts, and by 4 & 5 Will. IV. c. 51, s. 27 (*a*).

When any person, chargeable with any duties of Excise, has been charged therewith, *any two or more justices*, out of the limits of the chief office of Excise, may (upon complaint of any overcharge made by any officer of Excise, within twelve calendar months next after the making of such charge) hear, adjudge, and determine such complaint, and examine the witnesses upon oath, who shall be produced as well on behalf of the complainant as of his Majesty, and of all parties therein concerned, and by warrant under their hands discharge or acquit such person of so much of such charge as shall be made out and proved before them to have been overcharged (*b*).

If the complainant has, before such acquittal, paid any money in respect of such overcharge, the commissioners of Excise, or the commissioner and assistant commissioners in Scotland and Ireland respectively, are required, upon such acquittal, to repay to the complainant, out of the public moneys in their hands, or at their discretion to allow out of the next duties becoming payable by the complainant, so much money as has been so paid (*b*).

No such complaint, however, is to be heard before the justices, unless a notice in writing of the time and place of hearing thereof (which must contain and set forth the ground and substance of such complaint) has been given to the collector of Excise in whose collection, or to the supervisor of Excise in whose district, such overcharge has been made, eight days at the least before the time appointed for the hearing of such complaint (*b*).

The payment of any duty with which the complainant has been charged, or any proceedings for the recovery thereof, are nevertheless not to be delayed or superseded by reason of the making of any such complaint, or of the same being depending (*b*).

These provisions are general with respect to all overcharges of Excise duties, but there are other cases for which, though not strictly falling under the head of overcharge, special provision is made, as in the case of sales by auction (*c*).

VI. The Forms of Proceedings in general before Justices, &c. under Excise Laws (*d*).

6. Forms of proceedings, &c.

As the 7 & 8 Geo. IV. c. 53, s. 73 (*ante*, 341), directs justices to proceed on the merits without regarding any *defect of form* in any inform-

(*a*) 7 & 8 Geo. IV. c. 53, s. 120, *ante*, 313; 19 Geo. III. c. 56, s. 11; 28 Geo. III. c. 37, s. 19; 38 Geo. III. c. 54, s. 3.

(*b*) 7 & 8 Geo. IV. c. 53, s. 120, *ante*, 313; 4 & 5 Will. IV. c. 51, s. 27.

(*c*) 19 Geo. III. c. 56, s. 1; 28 Geo. III. c. 37, s. 19; 38 Geo. III. c. 54, s. 3; *ante*, 724, tit. "*Auctioneers.*"

(*d*) See other older forms of proceed-

ation or proceeding therein, and the 82nd sect. of the same act (*ante*, 344) directs commissioners of appeal and justices of the peace at quarter sessions not to regard matters of form, so great accuracy is not necessary as would be otherwise required; still, however, matters of substance must be observed, and it may assist in practice to give a few of the usual forms (*a*).

3. *Proceedings, &c. before justices, &c.*

No. I.—INFORMATIONS.

(A.) Formal parts of information for recovery of a penalty, and condemnation of a seizure exhibited before one justice.

(1). Formal parts of information for recovery of penalties and condemnation of seizure before one justice.

County of ——, to wit. } *Be it remembered, that, on this —— of ———, in the year of our Lord* [1843], *at ———, in the county of ——, A. B. being one of Her Majesty's officers of Excise, now here in his proper person, as well for Her present Majesty as for himself, exhibiteth to and before me, E. F. Esq., one of Her Majesty's justices of the peace in and for the said county of ——, wherein the offence* (*a*) *hereinafter mentioned was committed, and where the goods, commodities, and chattels hereinafter mentioned were seized, an information* (*which same information is commenced and prosecuted by order of the commissioners of Excise* (*b*)), *and thereby informeth me, the said justice, that within four months last past, to wit, on the —— day of ——, in the year of our Lord ——, at ——,* [here state the offence with certainty and not in the alternative, and then proceed as follows]; *and the said A. B. who sues as aforesaid, prayeth judgment in the premises, and that he may have one moiety of the said penalty and forfeiture, according to the form of the statute in such case made and provided; and that the said C. D. may be summoned to answer the said premises, and to make defence thereto.* *A. B.*

Exhibited to and before me, the day and year first above written, } *E. F.*

(B.) Formal parts of information for recovery of a penalty, and the condemnation of a seizure exhibited before two justices.

(2). The like before two justices.

County of ——, to wit. } *Be it remembered, that, on this —— day of ———, in the year of our Lord* [1843], *at ———, in the county of ——, A. B. being one of Her Majesty's officers of Excise, now here in his proper person, as well for Her present Majesty as for himself, exhibiteth to and before us, E. F. and G. H. two of Her Majesty's justices of the peace for the said county, wherein the offence hereinafter mentioned was committed, and where the goods, commodities, and chattels hereinafter mentioned were seized, an information* (*which same information is commenced and prosecuted by order of the commissioners of Excise*), *and thereby informeth us, the said justices, that* [here state the offence with certainty, and not in the alternative.] *Whereupon the said A. B. prayeth judgment in the premises, and that he may have one moiety of the said penalty and forfeitures, according to the form of the statute in such case made and provided, and that the said C. D. may be summoned to answer the said premises, and to make defence thereto.* *A. B.*

Exhibited to and before us, the day and year first above written, } *E. F. & G. H.*

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ings under the Excise laws, *Paley on Convictions*, 2*nd ed.* 691, &c.; and see the prescribed forms in the *Irish* act, 1 & 2 Will. IV. c. 55, schedule.

(*a*) If more than one offence is stated in the information, insert the word "several," and add an "s" to the word offence.

(*b*) If the information be exhibited in England, insert the words "*commissioners of Excise;*" if in Scotland or Ireland, "*commissioners and assistant commissioners of Excise in Scotland*" or "*Ireland,*" as the case may be.

3. *Proceedings, &c. before justices, &c.*

(C.) Formal parts of information for the recovery of a penalty exhibited before one justice.

(3) Formal parts of information for the recovery of penalties before one justice.

County of ——, to wit. } *Be it remembered, that this —— day of ———, in the year of our Lord* [1843], *at ———, in the county of ——, A. B., being one of Her Majesty's officers of Excise, now here in his proper person, as well for Her present Majesty as for himself, exhibiteth to and before me, E. F., one of Her Majesty's justices of the peace for the said county of ——, wherein the offence hereinafter mentioned was committed, an information (which same information is commenced and prosecuted by order of the commissioners of Excise), and thereby informeth me, the said justice, that one C. D.* [here state the offence.] *Whereupon the said C. D. prayeth judgment in the premises, and that he may have one moiety of the said penalty* [state the sum], *according to the form of the statute in such case made and provided, and that the said C. D. may be summoned to answer the said premises, and to make defence thereto.* *A. B.*

Exhibited to and before me, the day and year first above written, E. F.

(D.) Formal parts of information for recovery of a penalty or penalties before one justice for the county, shire, division, city, town, or place, where the person committing the offence or offences is found.

(4). The like for the county &c. where the person committing the offence is found.

County of ——, to wit. } *Be it remembered, that this —— day of ———, in the year of our Lord* [1843], *at ———, in the county of ——, A. B. being one of Her Majesty's officers of Excise, now here in his proper person, as well for Her present Majesty as for himself, exhibiteth to and before me, E. F. one of Her Majesty's justices of the peace for the said county of ——, wherein C. D. the person committing the offence hereinafter mentioned, is found, an information (which same information is commenced and prosecuted by order of the commissioners of Excise), and thereby informeth me, the said justice, that* [here state the offence], *and the said C. D. is now found in the said county of ——. Whereupon the said C. D. prayeth judgment in the premises, and that he may have one moiety of the said penalty and forfeitures, according to the form of the statute in such case made and provided, and that the said C. D. may be summoned to answer the said premises, and to make defence thereto.*

Exhibited to and before me, the day and year first above written, E. F.

(E.) Information before one justice for the condemnation of British spirits, with packages, carriage, and cattle, and the recovery of the optional penalty of 100*l.* applicable to England.—(See 7 & 8 Geo. IV. c. 53, s. 69, *ante*, p. 690.)

(5). Information for condemnation of British spirits, with packages &c. and recovery of optional penalty of 100*l.*

County of ——, to wit. } *Be it remembered, that on the —— day of ———, in the year of our Lord* [1843], *at ———, in the county of ——, A. B., one of Her Majesty's officers of Excise, now here in his proper person, as well for Her present Majesty as for himself, exhibiteth to and before me, E. F., Esq., one of Her Majesty's justices of the peace for the said county of ——, wherein the offence hereinafter mentioned was committed, and where the goods, commodities, and chattels hereinafter mentioned were seized, an information (which same information is commenced and prosecuted by order of the commissioners of Excise), and thereby informeth me, the said justice, that within four calendar months last past, to wit, on the —— day of ——, in the year of our Lord ——, at ——, in the said county of ——, one G. H. being then and there an officer of Excise, did seize and arrest, as forfeited, from C. D. a certain large quantity, to wit, twenty gallons of British spirits, contained in divers packages, to wit, four bottles, and a certain carriage, to wit, a cart, and certain cattle, to wit, one mule, then and there used in the removal of the said spirits [the same spirits], for that the said C. D. then and there knowingly had in his custody and possession the said spirits, after the same had been removed*

from the place where the same ought to have been charged with the duty payable in respect thereof, before either the duty to which the same was liable had been charged and paid, or secured to be paid, or such spirits had been lawfully condemned as forfeited, the said packages, for that the same then and there contained the said spirits so forfeited as aforesaid, and the said carriage and cattle, for that the same were then and there used in the removal thereof, contrary to the form of the statutes in that case made and provided, whereby and by force of the statutes in that case made and provided the said spirits then and there became forfeited, together with the said packages containing the same, and the said carriage and cattle then and there used in the removal thereof, and the said C. D., being the person so offending, hath forfeited and lost the sum of 100l., the said A. B., who sues as aforesaid, having elected, and hereby electing, the said penalty of 100l. in lieu and instead of treble the value of such spirits; whereupon the said A. B. prayeth judgment in the premises, and that the said C. D. may be summoned to answer the said premises, and to make defence thereto. *A. B.*

3. *Proceedings, &c. before justices, &c.*

Exhibited to and before me, the day and year first above mentioned, E. F.

(F.) Form of information exhibited before one justice for the condemnation of a seizure not claimed.

County of ——, to wit. *Be it remembered, that this —— day of ———, in the year of our Lord* [1843], *at ———, in the county of ——, A. B., being one of Her Majesty's officers of Excise, now here in his proper person, as well for Her present Majesty as for himself, exhibiteth, to and before me, E. F., Esq., one of Her Majesty's justices of the peace for the said county of ——, where the goods, commodities, and chattels, hereinafter mentioned were seized, an information (which same information is commenced and prosecuted by order of the commissioners of Excise), and thereby informeth me, the said justice, that within four calendar months last past, to wit, on the —— day of ——, in the year of our Lord ——, at ——, in the said county of ——, one G. H., being then and there an officer of Excise, did seize and arrest as forfeited, from a certain person unknown, as well to the said A. B. as to him the said G. H., a certain large quantity, to wit —— gallons of* [*British*] *spirits, contained in divers packages, to wit* [*five bottles*], *and a certain carriage, to wit, a* [*cart*], *and certain cattle, to wit, one* [*mule*], *then and there used in the removal of the said spirits; for that the said person so unknown, as aforesaid, then and there knowingly had in his custody and possession the said spirits, after the same had been removed from the place where the same ought to have been charged with the duty payable in respect thereof, before either the duty to which the same was liable had been charged and paid, or secured to be paid, or such spirits had been lawfully condemned as forfeited; and for that the said packages then and there contained the said spirits so forfeited as aforesaid, and for that the said carriage and cattle were then and there used in the removal thereof, contrary to the form of the statutes in that case made and provided, whereby and by force of the statutes in that case made and provided the said spirits then and there became forfeited, together with the said packages containing the same, and the said carriage and cattle then and there used in the removal thereof. Whereupon the said A. B. (no one appearing to claim the said goods, commodities, and chattels, so seized as aforesaid) prayeth judgment in the premises.* *A. B.*

(6). Information for condemnation of seizure not claimed.

Exhibited to and before me, the day and year first above written, E. F.

(G.) Form of information before one justice for recovery of double the value of duties neglected to be paid.

County of ——, to wit. *Be it remembered, that on this —— day of ———, in the year of our Lord* [1843], *at ———, in the county of ——, A. B. being one of Her Majesty's officers of Excise, now here in his proper person, as well for Her present Majesty as for himself, exhibiteth to and before me, C. D. one of Her Majesty's justices of the peace for the said county of ——, where the offence herein-*

(7). Information for the recovery of double the value of duties not paid.

3. *Proceedings, &c. before justices, &c.*

after mentioned was committed, an information (which same information is commenced and prosecuted by order of the commissioners of Excise), and thereby informeth me, the said justice, that one E. F. being, before and at and after the several times, and at the place in that behalf hereinafter mentioned, a maltster and maker of malt, did, within four calendar months last past, that is to say, between the —— day of —— now last past, and the [*twentieth*] *day of* [*October*] *then next following, to wit, at ——, in the said county of ——, make divers, that is to say,* [*ten thousand*] *bushels of malt, chargeable with certain duties of Excise payable to Her said Majesty, by the statutes* [if duty sought to be recovered is imposed by one statute, cancel the "*s*"] *in that case made and provided; and the same having been charged upon and incurred by the said E. F. he thereby became indebted to Her said Majesty in the sum of* [120*l.* 10*s.* 6*d.*] *which* [if the payment is accelerated by a demand, insert the words "having been demanded," but if not, and the duties are payable, dash up this blank] *having been demanded according to the directions of the statute in that case made and provided, he ought, before the day of exhibiting this information, to have paid and cleared off, but hath omitted and neglected so to do, contrary to the form of the statute in such case made and provided, whereby and by force of the statute in that case made and provided, he hath forfeited double the value of the said duties, that is to say, the sum of* [120*l.* 10*s.* 6*d.*]: *whereupon the said A. B. prayeth judgment in the premises; and that the said C. D. may be summoned to answer the said premises, and to make defence thereto.* *A. B.*

Exhibited to and before me, the day and year first above written, *E. F.*

Of late a printed form of information, or rather *informations*, against several offenders, for several distinct offences committed at different times, has been issued, with a form, printed on the back, of *one conviction* against several offenders for several distinct offences. These forms may be used as *minutes*, and the *formal convictions* may afterwards be drawn up fully. But it may be safer to adopt at once separate informations and convictions, when time will allow.

See the form of such information in the following page; and the form of such conviction, *post*, p. 1023.

(G.) Form of information against several persons for several distinct offences.

County of ——, to wit. } Be it remembered, that, on this —— day of ——, in the year of our Lord [1843], at ——, in the county of ——, A. B. one of Her Majesty's officers of Excise, as well for Her said Majesty as for himself, exhibiteth to and before me, E. F., one of Her Majesty's justices of the peace for the said county of ——, wherein the several offences in the fourth column of the hereunder scheme or schedule were respectively committed, and the goods and chattels mentioned in the fifth column of the said scheme or schedule were seized, informations (which same informations are commenced and prosecuted by order of the commissioners of Excise); and thereby informeth me, that, within four calendar months now last past, the several and respective persons named in the first column of the said scheme or schedule, (and who are respectively of the trade and business under and subject to the laws of Excise, mentioned in the said first column, and carrying on such trade and business respectively, at the respective times and places mentioned in the second and third columns of the said scheme or schedule), at the several places respectively mentioned in the said second column of the said scheme or schedule, at the several times respectively mentioned in the said third column of the said scheme or schedule, have severally and respectively been guilty of the offences in that behalf respectively mentioned in the said fourth column, against the laws and statutes of Excise; which several offences, with the several forfeitures of goods and chattels thereby incurred, are set forth opposite to or against the names of the said several persons who have committed the said several offences respectively mentioned in the said fourth column; and the penalties incurred by the said offences respectively are set forth in the sixth column of the said scheme or schedule, opposite to the respective offences. And thereupon the said informant, as well for her said Majesty as for himself, prays the consideration of the premises; and that the said several and respective persons may be convicted of their said several offences, and may be adjudged to have forfeited and to pay the said several penalties in that behalf mentioned in the said sixth column, and that the goods and chattels respectively mentioned in the said fifth column may, for the reasons in that behalf in the said fourth column mentioned, remain forfeited.

Exhibited before me, this —— day of ——, 1843.

FIRST COLUMN.	SECOND COLUMN.		THIRD COLUMN.	FOURTH COLUMN.	FIFTH COLUMN.										SIXTH COLUMN.		
					Goods and Chattels forfeited.												
					Gallons of				Pounds Weight of						Penalties incurred.		
Name of each Defendant, and his or her Trade and Business under and subject to the Laws of Excise.	Place where each Offence was committed.	County in which each Offence was committed.	Day of the Month on which, and Year in which each Offence was committed.	Nature of each Offence.	Foreign Brandy.	Rum.	Geneva.	Wine.	Coffee.	Tea.	Salt.	Tobacco.	Snuff.	Horses.	£.	s.	d.

3. *Proceedings, &c. before justices, &c.*

No. II.—SUMMONSES, NOTICES, AND SUBPŒNA.

(A.) Form of formal parts of summons for the recovery of a penalty, and the condemnation of a seizure, when information exhibited before one justice for the county &c. where offence committed.

To C. D.

(1). Summons for recovery of penalty and condemnation of seizure, by one justice of the county where offence was committed.

County of ——, to wit. } *You are hereby to take notice, that A. B., officer of Excise, having, on the day of the date of this summons, exhibited to and before me, E. F., Esq., one of her Majesty's justices of the peace for the said county of ——, (wherein the offence hereinafter mentioned was committed), at ——, in the said county, an information by order of the commissioners of Excise against you, for the forfeiture of the sum of* [100*l.*], *and also for the forfeiture of certain goods and chattels, to wit,* [*fifty gallons of British spirits*], *for that* [state the legal ground of forfeiture], *and also for the forfeiture of the further sum of* [100*l.*], *and also for the forfeiture of certain other goods and chattels, to wit, &c.* [name them] *for that* [state the legal ground of forfeiture]. *I have appointed that all parties shall be heard of and concerning the matter and matters of fact in the said information mentioned and alleged, on the —— day of ——, now instant, at —— of the clock in the —— noon of the said day, at the house of W. R., being an inn and public-house known by the sign of the ——, at ——, in the said county of ——; at which time and place you are hereby required to be and appear before such of her Majesty's justices of the peace for the said county as shall be then and there present, and have jurisdiction to hear and determine the same, then and there to make your defence in and to the matters contained in the said information; but, though you fail therein, the said last-mentioned justices (at the time and place in that behalf before mentioned) will proceed to the examination of the matter and matters of fact in the said information mentioned and alleged, and thereupon then and there give judgment and sentence as in and by the statute in that case made and provided is directed. And I do hereby authorize and require any officer of Excise to serve this summons, and to attend at the time and place in that behalf before mentioned, then and there to make a return of the execution hereof. Given under my hand, at ——, in the said county of ——, this —— day of ——, in the year of our Lord* [1843].

(B.) Form of formal parts of summons for the recovery of a penalty and the condemnation of a seizure, when information exhibited before two justices for the county &c. where offence committed.

To C. D.

(2) The like, by two justices.

County of ——, to wit. } *You are hereby to take notice, that A. B., officer of Excise, having, on the day of the date of this summons, exhibited to and before us, E. F. and G. H., Esqrs., two of her Majesty's justices of the peace for the said county of ——, at ——, in the said county, wherein the offence hereinafter mentioned was committed, an information, by order of the commissioners of Excise, against you, for the forfeiture of the sum of* [100*l.*] *and also for the forfeiture of certain goods and chattels, to wit,* [*fifty gallons of British spirits*], *for that* [state the legal ground of forfeiture], *and also for the forfeiture of the further sum of* [100*l.*] *and also for the forfeiture of certain other goods and chattels, to wit, &c.* [name them], *for that* [state the legal ground of forfeiture]. *We have appointed that all parties shall be heard of and concerning the matter and matters of fact in the said information mentioned and alleged, on the —— day of —— now instant, at* [*eleven*] *of the clock in the —— noon of the same day, at the house of W. R., being an inn and public-house well known by the name of the ——, at ——, in the said county of ——; at which time and place you are hereby required to be and appear before such of her Majesty's justices of the peace for the said county as shall be then and there present, and have jurisdiction to hear and determine the same, then and there to make your defence in and to the matters contained in the said information; but, though you fail therein, the said last-mentioned justices (at the time and place in that behalf before mentioned) will proceed to the examination of the matter and matters of fact in the said information mentioned and alleged, and thereupon then and there give judgment and sentence, as in and by the statute in such case made and provided is directed. And we do hereby authorize and require any officer of Excise*

to serve this summons, and to attend at the time and place in that behalf before mentioned, then and there to make a return of the execution hereof. Given under our hands, at ———, in the said county of ——, this —— day of ——, in the year of our Lord [1843].

3. *Proceedings, &c. before justices, &c.*

(C.) Form of formal parts of summons for the recovery of a penalty when information exhibited before one justice for the county &c. where offence committed.

To C. D.

(3). Summons for recovery of penalty, by one justice of the county where offence was committed.

County of ——, to wit. } *You are hereby to take notice, that A. B., officer of Excise, having, on the day of the date of this summons, exhibited to and before me, E. F., Esq., one of her Majesty's justices of the peace for the said county of ——, at ———, in the said county, an information, by order of the commissioners of Excise, against you, for the forfeiture of the sum of* [100*l.*], *for that* [state the legal ground of forfeiture], *and also for the forfeiture of the further sum of* [100*l.*], *for that* [state the legal ground of forfeiture]. *I have appointed that all parties shall be heard of and concerning the matter and matters of fact in the said information mentioned and alleged, on the —— day of —— now instant, at* [*eleven*] *of the clock in the ——noon of the said day, at the house of W. R., being an inn and public-house known by the sign of the ——, at ———, in the said county of ——; at which time and place you are hereby required to be and appear before such of her Majesty's justices of the peace for the said county as shall be then and there present, and have jurisdiction to hear and determine the same, then and there to make your defence in and to the matters contained in the said information; but, though you fail therein, the said last-mentioned justices* (*at the time and place in that behalf before mentioned*) *will proceed to the examination of the matter and matters of fact in the said information mentioned and alleged, and thereupon then and there give judgment or sentence, as in and by the statute in such case made and provided is directed. And I do hereby authorize and require any officer of Excise to serve this summons, and to attend at the time and place in that behalf before mentioned, then and there to make a return of the execution hereof. Given under my hand, at ———, in the said county of ——, this —— day of ——, in the year of our Lord* [1843].

(D.) Form of formal parts of summons for the recovery of a penalty, exhibited before one justice for the county, &c., where the person committing the offence is found.

To C. D.

(4). The like, by one justice of the county where person committing the offence is found.

County of ——, to wit. } *You are hereby to take notice, that A. B., officer of Excise hath, on the day of the date of this summons, at ——, in the county of ———, exhibited, by order of the commissioners of Excise, to and before me, E. F., Esq., one of Her Majesty's justices of the peace for the said county of ——, wherein you, the said C. D, being the person who committed the several offences hereinafter mentioned, and found an information against you, and thereby informeth me, the said justice, that* [state the grounds of the information]; *and that you, the said C. D., are now found in the said county of ——. And you will further take notice, that I have appointed that all parties shall be heard of and concerning the matter and matters of fact in the said information mentioned and alleged, on the —— day of —— now instant, at* [*eleven*] *of the clock in the —— noon of the said day, at the house of W. R., being an inn and public-house known by the sign of the ——, at ———, in the said county of ——; at which time and place you are hereby required to be and appear before such of Her Majesty's justices of the peace for the said county of —— as shall be then and there present, and have jurisdiction to hear and determine the same, then and there to make your defence in and to the matters contained in the said information; but, though you fail therein, the said last-mentioned justices* (*at the time and place in that behalf before mentioned*) *will proceed to the examination of the matter and matters of fact in the said information mentioned and alleged, and thereupon then and there give judgment and sentence, as in and by the statute in that case made and provided is directed. And I do hereby authorize and require any officer of Excise to serve this summons, and to attend at the time and place in that behalf before mentioned, then and there to make a return of the execution hereof. Given under my hand, at ———, in the said county, this —— day of ——, in the year of our Lord* [1843].

3. *Proceedings, &c. before justices, &c.*

(E.) Summons upon an information before one justice for the condemnation of British spirits, with packages, carriages, and cattle, and the recovery of the optional penalty of 100*l.*, applicable to England.

To C. D.

(5). Summons for condemnation of British spirits, with packages, &c. and recovery of optional penalty of 100*l.*

County of ——, to wit. *You are hereby to take notice, that A. B., officer of Excise, hath, on the day of the date of this summons, at ——, in the county of ——, exhibited, by order of the commissioners of Excise, to and before me, E. F., Esq., one of Her Majesty's justices of the peace for the said county of ——, wherein the offence hereinafter mentioned was committed, and where the goods, commodities, and chattels hereinafter mentioned were seized, an information against you for the forfeiture of certain goods, commodities, and chattels; that is to say, a certain large quantity, to wit,* [*twenty gallons of British spirits*], *contained in divers packages, to wit,* [*four bottles*], *and a certain carriage, to wit,* [*a cart*], *and certain cattle, to wit,* [*one mule*], *used in the removal of the said spirits, and also the sum of* [100*l.*]; *and thereby informeth me that, within four calendar months last past, to wit, on the —— day of ——, in the year of our Lord* [1843], *at ——, in the said county of ——, one J. W., being then and there an officer of Excise, did seize and arrest, as forfeited from you, the said C. D., the said spirits, contained in the said packages, and the said carriage and cattle, then and there used in the removal of the said spirits; the same spirits, for that you, the said C. D., then and there knowingly had in your custody and possession the said spirits, after the same had been removed from the place where the same ought to have been charged with the duty payable in respect thereof, before either the duty to which the same was liable had been charged and paid, or secured to be paid, or such spirits had been lawfully condemned as forfeited; the said packages, for that the same then and there contained the said spirits so forfeited, as aforesaid; and the said carriage and cattle, for that the same were then and there used in the removal thereof, contrary to the form of the statute in that case made and provided; whereby, and by force of the statute in that case made and provided, the said spirits then and there became forfeited, together with the said packages containing the same, and the said carriage and cattle then and there used in the removal thereof; and you, the said C. D., being the person so offending, have forfeited and lost the said sum of* [100*l.*], *the said A. B., who sues as aforesaid, having elected and thereby electing the said penalty of* [100*l.*], *in lieu and instead of treble the value of such spirits; and you will further take notice, that I have appointed that all parties shall be heard of and concerning the matter and matters of fact in the said information mentioned and alleged, on the —— day of —— now instant, at* [*eleven*] *of the clock in the —— noon of the said day, at the house of W. R., being an inn and public-house known by the sign of the ——, at ——, in the said county of ——; at which time and place you are hereby required to be and appear before such of Her Majesty's justices of the peace for the said county as shall be then and there present, and have jurisdiction to hear and determine the same, then and there to make your defence in and to the matters contained in the said information; but, though you fail therein, the said last-mentioned justices (at the time and place in that behalf before mentioned) will proceed to the examination of the matter and matters of fact in the said information mentioned and alleged, and thereupon then and there give judgment and sentence, as in and by the statute in that case made and provided is directed; and I do hereby authorize and require any officer of Excise to serve this summons, and to attend at the time and place in that behalf before mentioned, then and there to make a return of the execution hereof. Given under my hand, at ——, in the said county of ——, this —— day of ——, in the year of our Lord* [1843].

(F.) Form of notice of hearing of information to be affixed on outside of Excise-office next to place of seizure, when seizure not claimed.

To all whom it may concern.

(6). Notice of hearing affixed on outside of Excise office next to place of seizure.

County of ——, to wit. *Take notice, that A. B., officer of Excise, having seized, on the —— day of —— now instant, at ——, in the county of ——, divers goods, commodities, and chattels, to wit,* [*twenty gallons of British spirits*], [*one cart*], *and* [*one mule*], *by virtue of a certain act of Parliament relating to the revenue of Excise, and no person appearing to claim the said goods, commodities, and chattels, so seized as aforesaid, and an information having this day been ex-*

hibited at ——, in the said county of ——, before me, one of her Majesty's justices of the peace for the said county of ——, within whose jurisdiction such seizure was made, for the condemnation thereof, that two of Her Majesty's justices of the peace for the county of ——, within whose jurisdiction such seizure was made, and who have jurisdiction to hear and determine the matter of the said seizure, will, by virtue of the statute in that case made and provided, on the —— day of —— instant, at [eleven] of the clock in the —— noon of the said day, at the house of W. R., being an inn and public-house known by the sign of the ——, at ——, in the said county of ——, proceed to the hearing and adjudging of the matters of such seizure, and examine into the cause thereof, and give judgment accordingly. Dated at ——, in the said county of ——, this —— day of ——, in the year of our Lord [1843.]

3. Proceedings, &c. before justices, &c.

(G.) Form of summons on information before one justice, for recovery of double the value of duties neglected to be paid.

To C. D.

County of ——, to wit. } *You are hereby to take notice, that A. B., officer of Excise, having, on the day of the date of this summons, exhibited to and before me, E. F., Esq., one of Her Majesty's justices of the peace for the county of ——, at ——, in the said county, an information, by order of the commissioners of Excise, against you, for the forfeiture of a certain large sum of money, to wit, the sum of* [100*l.*], *the same being double the value of certain duties of Excise charged upon and incurred by you, for that you, being, before and at and after the several times, and at the place, in that behalf hereinafter mentioned, a [maltster and maker of malt], did, within [four months] last past, that is to say, between the —— day of —— now last past and the —— day of —— then next following, to wit at ——, in the said county of ——, make divers, that is to say, [ten thousand] bushels of malt, chargeable with certain duties of Excise, payable to Her said Majesty by the statutes in that case made and provided; and the same having been charged upon and incurred by you, you thereby became indebted to Her said Majesty in the sum of* [50*l.* 2*s.* 8*d.*]; *which (having been demanded) according to the directions of the statute in that case made and provided, you ought, before the day of exhibiting the said information, to have paid and cleared off; but you have omitted and neglected so to do, contrary to the form of the statute in that case made and provided, whereby, and by force of the statute in that case made and provided, you have forfeited double the value of the said duties; that is to say, the said sum of* [100*l.*] *I have appointed that all parties shall be heard of and concerning the matter and matters of fact in the said information mentioned and alleged, on the —— day of —— now instant, at [eleven] of the clock in the —— noon of the said day, at the house of W. R., being an inn and public-house known by the sign of the ——, at ——, in the said county of ——; at which time and place you are hereby required to be and appear before such of Her Majesty's justices of the peace for the said county as shall be then and there present, and have jurisdiction to hear and determine the same, then and there to make your defence in and to the matters contained in the said information; but, though you fail therein, the said last-mentioned justices (at the time and place in that behalf before mentioned) will proceed to the examination of the matter and matters of fact in the said information mentioned and alleged, and thereupon then and there to give judgment or sentence, as in and by the statute in such case made and provided is directed; and I do hereby authorize and require any officer of Excise to serve this summons, and to attend at the time and place in that behalf before mentioned, then and there to make a return of the execution thereof. Given under my hand, at ——, in the said county of ——, this —— day of ——, in the year of our Lord* [1843].

(7). Summons for recovery of double the value of duties.

(H.) Summons or subpœna for attendance of witnesses, to give evidence before a justice.

To I. K.

County of ——, to wit. } *You are hereby required by me, E. F., Esq., one of Her Majesty's justices of the peace for the county of ——, personally to be and appear on the —— day of —— now instant, at [eleven] of the clock in the —— noon of the same day, at the house of W. R., being an inn and public-house known by the sign of the ——, at ——, in the said county of ——, before such of Her Majesty's justices of the peace for the said county of ——, having jurisdiction*

(8). Subpœna for attendance of witnesses.

3. *Proceedings, &c. before justices, &c.*

in the matter, as shall be then and there present, and who will then and there hear, adjudge, and determine, a certain information there depending, exhibited, under a certain act of Parliament relating to the revenue of Excise, by A. B., officer of Excise, who sues, as well for Her said Majesty as for himself, against C. D., then and there to give evidence, and then and there to testify the truth according to your knowledge of any facts alleged in such information, or touching or relating thereto; but if you fail therein, you, by the statute in that case made and provided, will forfeit [50*l.*] *Dated at* ——, *in the said county of* ——, *this* —— *day of* ——, *in the year of our Lord* [1843].

No. III.—CONVICTIONS.

(A.) Formal parts of conviction, as given by the 3 Geo. IV. c. 23 (*a*).

(1). Conviction, under 3 Geo. 4, c. 23.

County [or as the case may be] *of* ——. } *Be it remembered, that on the* —— *day of* ——, *in the year of our Lord* ——, *at* ——, *in the county of* ——, *A. B., of* ——, *in the county of* ——, *labourer,* [or as the case may be], *personally come before us, C. D. and E. F., two of Her Majesty's justices of the peace in and for the said county, and informed us, that G. H., of* ——, *in the said county of* ——, *on the* —— *day of* ——, *at* ——, *in the said county, did* [here set forth the fact for which the information is laid], *contrary to the form of the statute in such case made and provided; whereupon the said G. H., after being duly summoned to answer the said charge, appeared before us, the said justices, on the* —— *day of* ——, *at* ——, *in the said county, and, having heard the charge contained in the said information, declared he was not guilty of the said offence* [or, as the case may happen to be, *did not appear before us,* &c., *pursuant to the said summons,* or, *did neglect and refuse to make any defence against the said charge*]; *whereupon we,* &c. [or, *nevertheless, we, the said justices, did proceed to examine into the truth of the charge contained in the said information, and on the* —— *day* —— *aforesaid, at the parish of* —— *aforesaid, one credible witness, to wit, A. W., of, in the county of* ——, *upon his oath, deposeth and saith,* [if G. H. be present, say *in the presence and hearing of the said G. H.*], *that, within three months* [or, as the case may be] *next before the said information was made before us, the said justices, by the said A. B., to wit, on the* —— *day of* ——, *in the year* ——, *the said G. H., at* ——, *in the said county of* ——, [here state the evidence, and as nearly as possible in the words used by the witness, and, if more than one witness be examined, state the evidence given by each; or, if the defendant confess, instead of stating the evidence, say] *and the said G. H. acknowledged and voluntarily confessed the same to be true: therefore it manifestly appearing to us, that he, the said G. H., is guilty of the offence charged upon him in the said information, we do hereby convict him of the offence aforesaid, and do declare and adjudge that he, the said G. H., hath forfeited the sum of* ——, *of lawful money of Great Britain, for the offence aforesaid, to be distributed* [or, *paid,* as the case may be] *according to the form of the statute in that case made and provided. Given under our hands and seals, the* —— *day of* ——, *in the year of our Lord* [1843].

C. D. (L. S.)
E. F. (L. S.)

(*a*) As to forms and requisites of convictions, see *ante*, 1004; and see other forms, *Paley on Convictions*, 2*nd ed.*, 693, 699, 701, 705, 710.

(B.) Form of conviction, or rather *minutes* of conviction, of several offenders for distinct offences (*a*).

County of ——, to wit. } At the time and place appointed for the hearing of the several informations mentioned on the other side of this paper, that is to say, on this —— day of ——, at ——, in the said county of ——, the several persons named in the first column of the scheme or schedule on the other side of this paper, and also in the first column of the hereunder scheme or schedule, do or do not respectively appear, as set forth in the second column of the hereunder scheme or schedule; and their said several and respective offences mentioned in the fourth column of the scheme or schedule on the other side of this paper, and also in the third column of the hereunder scheme or schedule, being respectively confessed, proved, or not proved, as expressed in the third column of the hereunder scheme or schedule; we, justices of the peace for the said county, whose names are hereunto subscribed, do convict, respite, or acquit the said several persons of their said several and respective offences, as stated in the fourth column of the hereunder scheme or schedule. It is therefore now here considered and adjudged by us, the said justices, whose names are hereunto subscribed, that the said several persons so named as above mentioned (if not acquitted or respited) have, for their said several offences, respectively forfeited the penalties and sums of money mentioned in the sixth column of the hereunder scheme or schedule; and that the goods and chattels mentioned in the fifth column of the scheme or schedule on the other side of this paper, and also in the fifth column of the hereunder scheme or schedule, are, for the reasons in that behalf aforesaid, forfeited; and which said penalties or sums of money, if mitigated, we, the said justices, have now here mitigated and lessened to the several and respective sums mentioned in the seventh column of the hereunder scheme or schedule, and hereunder set opposite to or against the respective names of the said several persons so named as above mentioned; and we, the said justices, whose names are hereunto subscribed, now here adjudge that the said forfeitures and penalties be distributed as the law directs.

Given under our hands, at —— aforesaid, this said —— day of ——, 1843.

FIRST COLUMN.	*SECOND COLUMN.*	*THIRD COLUMN.*	*FOURTH COLUMN.*	*FIFTH COLUMN.*										*SIXTH COLUMN.*			*SEVENTH COLUMN.*		
				Goods and Chattels forfeited															
				Gallons of				*Pounds Weight of*											
Name of each Defendant.	*Whether such Defendant did or did not appear.*	*Whether each Offence confessed, proved, or not proved.*	*Whether each Defendant convicted, acquitted, or respited.*	*Brandy.*	*Rum.*	*Geneva.*	*Wine.*	*Coffee.*	*Tea.*	*Salt.*	*Tobacco.*	*Snuff.*	*Horses.*	*Penalties incurred.*			*Sum to which each Penalty is reduced by Mitigation.*		
														£.	s.	d.	£.	s.	d.

(*a*) See the observations, *ante*, p. 1016, and form of information on the back of which this is printed, *ante*, p. 1014.

3. *Proceedings, &c. before justices, &c.*

No. IV.—WARRANT.

(A.) Warrant by two justices for the sale of goods &c. condemned (*a*)

1. Warrant for sale of goods &c. condemned.

County of ——, to wit. } *To G. H. and I. K., Officers of Excise, or either of them.*

An information having been exhibited by A. B., officer of Excise, for the condemnation of the following goods, commodities, and chattels, seized and forfeited by virtue of the laws and statutes relating to the revenue of Excise, that is to say [enumerate the goods, &c., condemned], *and the same having been condemned by two of her Majesty's justices of the peace for the said county of ——, we, two of her Majesty's justices of the peace for the said county of ——, do hereby authorize you, or either of you, to sell the said goods, commodities, and chattels, publicly to the best bidder, at such time and place and in such manner as the commissioners of Excise shall order and direct, under and subject to such rules, regulations, and provisions as are by any act or acts of Parliament in that behalf made and directed. Dated at ——, in the county of ——, this —— day of ——, in the year of our Lord* [1843].

No. V.—LEVY WARRANTS.

(A.) Common levy-warrant, granted by two justices, on a day subsequent to the hearing against a person not stated to be a trader subject to Excise laws, for a full penalty.

1. Common levy-warrant against a person not stated to be subject to Excise laws, for a full penalty.

County of ——, to wit. } *To G. H. and I. K., Officers of Excise, or either of them.*

We, whose hands are hereunto set, being two of her Majesty's justices of the peace for the county of ——, do, in her Majesty's name, authorize and command you, every or any of you, that upon the goods and chattels of C. D. you do levy the sum of [70*l.* 4*s.* 5*d.*], *being a penalty recovered against the said C. D. by A. B., officer of Excise, who prosecuted, as well for our sovereign lady the Queen as for himself, for a certain offence committed by the said C. D. against the laws and statutes of Excise; whereof the said C. D. was convicted before and by the judgment of E. F., Esq., and G. H., Clerk, two of her Majesty's justices of the peace for the said county of ——, on the —— day of —— last, with all reasonable charges and expenses attending such levy (and which said judgment remains unsatisfied); and for levying thereof, we do hereby authorize and command you, every or any of you, to seize and take the goods and chattels aforesaid, and either to detain and keep the same in the place where the same shall respectively be found, or to remove the same to the next office of Excise; and if within* [*six*] *days next after such seizure, the said penalty shall not be paid or satisfied, then and in such case, so soon as conveniently may be after the expiration of the said* [*six*] *days, to sell and dispose thereof, or of so much thereof as will be sufficient to levy the said penalty of* [70*l.* 4*s.* 5*d.*], *with all reasonable charges and expenses attending such levy, and to deduct the said penalty, charges, and expenses, out of the money arising by such sale, and return the overplus, if any, of the said goods and chattels, or any part thereof, or of the money arising from the sale thereof, or of any part thereof, to the proprietor or proprietors of the said goods and chattels, upon which such levy shall have been made, or to the person or persons who shall be legally entitled thereto, and forthwith to pay the said penalty to the collector of Excise for the collection called —— collection, for the time being, to be by him applied and answered for, according to the statute in such case made and provided. And all constables and headboroughs of the said county are hereby required to be aiding and assisting to you in the due execution hereof; but, in case there cannot be found sufficient to levy the said penalty, with all reasonable charges and expenses attending such levy, then and in such case you, by a return of this warrant, are forthwith to certify the same to us, or some other justice or justices of the peace for the said county of ——, having jurisdiction therein. Given, &c.* (*b*).

(*a*) 7 & 8 Geo. IV. c. 53, s. 100, *ante*, p. 702, and s. 86, *ante*, p. 696. If goods subject to any duty of either Excise or Customs are condemned, such duty not having been paid, they are not to be sold for home consumption at a less price than the amount of the duty to which they are subject. 7 & 8 Geo. IV. c. 53, s. 101, *ante*, p. 702.

(*b*) In order to execute this warrant

3. *Proceedings, &c. before justices, &c.*

(B.) Common levy-warrant, granted by two justices, on a day subsequent to the hearing, against a person not stated to be a trader subject to the Excise laws, for a mitigated penalty.

2. The like, for a mitigated penalty.

County of ——, to wit. } *To G. H. and I. K., Officers of Excise, or either of them.*

We, whose hands are hereunto set, being two of her Majesty's justices of the peace for the county of ——, do, in her Majesty's name, authorize and command you, every or any of you, that upon the goods and chattels of C. D. you do levy the sum of [70*l.* 4*s.* 5*d.*] (*being a sum of money to which a certain penalty incurred by him has been mitigated*), *recovered against the said C. D. by A. B., officer of Excise* (*who prosecuted, as well for our sovereign Lady the Queen as for himself, for a certain offence committed by the said C. D. against the laws and statutes of Excise, whereof the said C. D. was convicted before and by the judgment of E. F., Esq., and G. H., Clerk, two of her Majesty's justices of the peace for the said county of ——, on the —— day of —— last*), *with all reasonable charges and expenses attending such levy* (*and which said judgment remains unsatisfied*); *and for levying thereof, we do hereby authorize and command you, every or any of you, to seize and take the goods and chattels aforesaid, and either to detain and keep the same in the place where the same shall respectively be found, or to remove the same to the next office of Excise; and if within* [*six*] *days next after such seizure, the said sum of* [70*l.* 4*s.* 5*d.*] *shall not be paid or satisfied, then and in such case, so soon as conveniently may be after the expiration of the said* [*six*] *days, to sell and dispose thereof, or of so much thereof as will be sufficient to levy the said sum of* [70*l.* 4*s.* 5*d.*], *with all reasonable charges and expenses attending such levy, and to deduct the said sum of* [70*l.* 4*s.* 5*d.*], *and the said charges and expenses, out of the money arising by such sale, and to return the overplus, if any, of the said goods and chattels, or any part thereof, or of the money arising from the sale thereof, or of any part thereof, to the proprietor or proprietors of the said goods and chattels, upon which such levy shall have been made, or to the person or persons who shall be legally entitled thereto, and forthwith to pay the said sum of* [70*l.* 4*s.* 5*d.*] *to the collector of Excise for the collection called —— Collection, for the time being, to be by him applied and answered for according to the statute in such case made and provided. And all constables and headboroughs of the said county are hereby required to be aiding and assisting to you in the due execution hereof; but in case there cannot be found sufficient to levy the said sum of* [70*l.* 4*s.* 5*d.*], *with all reasonable charges and expenses attending such levy, then and in such case you, by a return of this warrant, are forthwith to certify the same to us, or some other justice or justices of the peace for the said county of ——, having jurisdiction therein. Given, &c.*

(C.) Special levy-warrant, granted by the convicting justices on the day of hearing, against a trader subject to the Excise laws, convicted in a full penalty on an information exhibited within the jurisdiction where the offence was committed, for double duty, or for any other penalty, for an offence against Excise laws.

3. Special levy-warrant against a trader subject to Excise laws, convicted in a full penalty for double duty.

County of ——, to wit. } *To G. H. and I. K., Officers of Excise, or either of them.*

Whereas, on this day, C. D., being a person carrying on the trade and business of a [*maltster and maker of malt*], *the same being a trade and business under and subject to the laws and statutes of Excise, hath been duly convicted by and before us, E. F., Esq., and G. H., Clerk, two of her Majesty's justices of the peace in and for the county of ——, by the judgment of us the said justices of an offence heretofore committed in the same county, by him, the said C. D., being then a person carrying on the said trade and business, and the same trade and business being then under and subject to the laws and statutes of Excise, against a certain act of Parliament re-*

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out of the jurisdiction of the justices granting it, in any other county, shire, division, city, town, or place, it is necessary that a justice of the peace of such other county, shire, division, city, town, or place, should indorse his name on such warrant, and add, after his signature, "*one of her Majesty's justices of the peace for the* [*county*] *of* ——," as the case may be; but it is not necessary to prove, in order to justify his indorsing such warrant, the handwriting of the justices granting the same.

3. *Proceedings, &c. before justices, &c.*

lating to the revenue of Excise, in the penalty of [70*l.* 4*s.* 5*d.*], *incurred by him for the said offence, under and by virtue of the said act, which said penalty was, by the said conviction and judgment of us the said justices, recovered against the said C. D. by A. B., officer of Excise, who prosecuted as well for our sovereign lady the Queen as for himself in that behalf. Now we, the said justices, do, in her Majesty's name, authorize and command you, every or any of you, that, upon all the* [*malt*], *and all the materials, preparations, utensils, and vessels for making thereof or by which the said trade and business of a* [*maltster and maker of malt*] *has been carried on by the said C. D., in the custody or possession of the said C. D., or of any person or persons, to the use of or in trust for the said C. D., and upon all the* [*malt*], *and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a* [*maltster and maker of malt*] *has been carried on by the said C. D., which were in his custody or possession when the said penalty was incurred, into whose hands soever the same shall have afterwards come, and by what conveyance or title soever the same shall be claimed, and also upon all the goods and chattels of the said C. D., you do levy the said penalty of* [70*l.* 4*s.* 5*d.*], *so recovered against the said C. D. by the said A. B., as aforesaid, whereof the said C. D. stands convicted before us this day, with all reasonable charges and expenses attending such levy; and for levying thereof we do hereby authorize and command you, every or any of you, to seize and take the* [*malt*], *materials, preparations, vessels, utensils, goods, and chattels aforesaid, and either to detain and keep the same in the place where the same shall respectively be found, or to remove the same to the next office of Excise; and if, within* [*six*] *days next after such seizure, the said penalty shall not be paid or satisfied, then and in such case, so soon as conveniently may be after the expiration of the said* [*six*] *days, to sell and dispose thereof, or of so much thereof as will be sufficient to levy the said penalty of* [70*l.* 4*s.* 5*d.*] *with all reasonable charges and expenses attending such levy, and to deduct the said penalty, charges, and expenses out of the money arising by such sale, and to return the overplus, if any, of the said* [*malt*], *materials, preparations, utensils, vessels, goods, and chattels, or any part thereof, or of the money arising from the sale thereof, or of any part thereof, to the proprietor or proprietors of the said* [*malt*], *materials, preparations, utensils, vessels, goods, and chattels respectively, upon which such levy shall have been made, or to the person or persons who shall be legally entitled thereto, and forthwith to pay the said penalty to the collector of Excise for the collection called —— Collection, for the time being, to be by him applied and answered for according to the statute in such case made and provided. And all constables and headboroughs of the said county are hereby required to be aiding and assisting to you in the due execution hereof; but, in case there cannot be found sufficient to levy the said penalty, with all reasonable charges and expenses attending such levy, then and in such case you, by a return of this warrant, are forthwith to certify the same to us, or some other justice or justices of the peace for the said county of ——, having jurisdiction therein. Given, &c.*

(D.) Special levy-warrant, granted by the convicting justices on the day of hearing, against a trader subject to the Excise laws, convicted in a mitigated penalty, on an information exhibited within the jurisdiction where the offence was committed, for double duty, or for any other penalty, for an offence against Excise laws.

4. The like, against a trader convicted in a mitigated penalty.

County of — —, to wit. } *To G. H. and I. K., officers of Excise, or either of them.*

Whereas, on this day, C. D., being a person carrying on the trade and business of a [*maltster and maker of malt*], *the same being a trade and business under and subject to the laws and statutes of Excise, hath been duly convicted by and before us, E. F., Esq., and G. H., Clerk, two of her Majesty's justices of the peace in and for the county of ——, by the judgment of us, the said justices, of an offence heretofore committed in the same county by him, the said C. D., being then a person carrying on the said trade and business, and the same trade and business being then under and subject to the laws and statutes of Excise, against a certain act of Parliament relating to the revenue of Excise, in the sum of* [70*l.* 4*s.* 5*d.*] (*being a sum of money to which a certain penalty incurred by him for the said offence, under and by virtue of the said act, has been by us mitigated*), *and which said sum of* [70*l.* 4*s.* 5*d.*] *was, by the said conviction and judgment of us, the said justices, recovered against the said C. D. by A. B., officer of Excise, who prosecuted as well for our sovereign Lady*

the Queen as for himself in that behalf. Now we, the said justices, do, in her Majesty's name, authorize and command you, every or any of you, that, upon all the [malt], and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a [maltster and maker of malt] has been carried on by the said C. D., in the custody or possession of the said C. D., or of any person or persons to the use of or in trust for the said C. D., and upon all the [malt], and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a [maltster and maker of malt] has been carried on by the said C. D., which were in his custody or possession when the said penalty was incurred, into whose hands soever the same shall have afterwards come, and by what conveyance or title soever the same shall be claimed, and also upon all the goods and chattels of the said C. D., you do levy the said sum of [70l. 4s. 5d.], so recovered against the said C. D. by the said A. B., as aforesaid, whereof the said C. D. stands convicted before us this day, with all reasonable charges and expenses attending such levy; and for levying thereof we do hereby authorize and command you, every or any of you, to seize and take the [malt], materials, preparations, vessels, utensils, goods, and chattels aforesaid, and either to detain and keep the same in the place where the same shall respectively be found, or to remove the same to the next office of Excise; and if, within [six] days next after such seizure, the said sum of [70l. 4s. 5d.] shall not be paid or satisfied, then and in such case, so soon as conveniently may be after the expiration of the said [six] days, to sell and dispose thereof, or of so much thereof as will be sufficient to levy the said sum of [70l. 4s. 5d.], with all reasonable charges and expenses attending such levy, and to deduct the said last-mentioned sum, and the said charges and expenses, out of the money arising by such sale, and to return the overplus, if any, of the said [malt], materials, preparations, utensils, vessels, goods, and chattels, or any part thereof, or of the money arising from the sale thereof, or of any part thereof, to the proprietor or proprietors of the said [malt], materials, preparations, utensils, vessels, goods, and chattels respectively, upon which such levy shall have been made, or to the person or persons who shall be legally entitled thereto, and forthwith to pay the said sum of [70l. 4s. 5d.] to the collector of Excise for the collection called —— Collection, for the time being, to be by him applied and answered for, according to the statute in such case made and provided. And all constables and headboroughs of the said county are hereby required to be aiding and assisting to you in the due execution hereof; but in case there cannot be found sufficient to levy the said sum of [70l. 4s. 5d.], with all reasonable charges and expenses attending such levy, then and in such case you, by a return of this warrant, are forthwith to certify the same to us, or some other justice or justices of the peace for the said county of ——, having jurisdiction therein. Given, &c. (a).

3. *Proceedings, &c. before justices, &c.*

No. VI.—RETURNS TO LEVY-WARRANTS.

(A.) Return to be indorsed on a common levy-warrant for a full or mitigated penalty, when no part of the penalty has been recovered, to one justice, for a body-warrant.

I, (G. H.), being one of the officers of Excise to whom the within warrant is directed, do hereby certify to E. F., Esq., one of her Majesty's justices of the peace for the county of ——, and within whose jurisdiction the within warrant was issued, that I have made diligent search for but cannot find (within the jurisdiction in which the said warrant was so issued) any goods or chattels of the within-named C. D., whereon the within-mentioned penalty, or any part thereof, can or may be levied, with the reasonable charges and expenses attending such levy. Dated this (b) —— day of ——, [1843].

1. Return indorsed on common levy warrant for a full or mitigated penalty, when no part of penalty has been recovered.

(B.) Return to be indorsed on a common levy-warrant for a full or mitigated penalty, when part of the penalty has been recovered, to two justices, for a body-warrant for residue.

I, (G. H.), being one of the officers of Excise to whom the within warrant is directed, do hereby certify to E. F. and L. M., Esqs., two of her Majesty's justices of

2. The like, when part of penalty has been recovered

(a) See note (b), p. 1024.

(b) This date must always be the day the body-warrant applied for upon this return is dated.

The officer should not be sworn to the truth of this return. He makes the return at his peril, and, if it is false, is answerable for it.

3. *Proceedings, &c. before justices, &c.*

the peace for the county of ——, *and within whose jurisdiction the within warrant was issued, that, by virtue of the said warrant, I have seized and sold divers goods and chattels of the within-named C. D., and thereon and thereout have levied the sum of* [70*l.* 4*s.* 5*d.*], *part of the within-mentioned penalty, with the reasonable charges and expenses attending such levy; and I have made diligent search for but cannot find (within the jurisdiction in which the said warrant was so issued) any more or further goods and chattels of the within-named C. D. (beyond the goods and chattels already seized and sold, as aforesaid), whereon the residue of the said penalty, or any part thereof, can or may be levied, with the reasonable charges and expenses attending such levy. Dated this* (*a*) —— *day of* ——, [1843].

(C.) Return to be indorsed on a special levy-warrant for a full or mitigated penalty, when no part of the penalty has been recovered, to one justice, for a body-warrant.

3. Return indorsed on a special levy-warrant for a full or mitigated penalty, when no part of penalty has been recovered.

I, (G. H.), being one of the officers of Excise to whom the within warrant is directed, do hereby certify to E. F., one of her Majesty's justices of the peace for the county of ——, *and within whose jurisdiction the within warrant was issued, that I have made diligent search for but cannot find (within the jurisdiction in which the said warrant was so issued) any such* [*malt*], *materials, preparations, utensils, or vessels, as is or are in and by the within warrant mentioned and directed to be levied on, or any goods or chattels, of the within-named C. D., whereon the said penalty, or any part thereof, can or may be levied, with the reasonable charges and expenses attending such levy. Dated this* (*a*) —— *day of* ——, [1843].

(D.) Return to be indorsed on a special levy-warrant for a full or mitigated penalty, when part of the penalty has been recovered, to one justice, for a body-warrant for residue.

4. The like, when part of penalty has been recovered.

I, (G. H.), being one of the officers of Excise to whom the within warrant is directed, do hereby certify to E. F., Esq., one of her Majesty's justices of the peace for the county of ——, *and within whose jurisdiction the within warrant was issued, that, by virtue of the within warrant, I have seized and sold divers quantities of* [*malt*], *materials, preparations, vessels, utensils, goods and chattels, in the within warrant in that behalf mentioned, and thereon and thereout have levied the sum of* [70*l.* 4*s.* 5*d.*], *part of the within-mentioned penalty, with the reasonable charges and expenses attending such levy; and I have made diligent search for but cannot find (within the jurisdiction within which the said warrant was so issued) any more or further such* [*malt*], *materials, preparations, vessels, or utensils, as is and are in the said warrant in that behalf mentioned, or any more or further goods or chattels of the within-named C. D. (beyond the* [*malt*], *materials, preparations, vessels, utensils, goods, and chattels, already seized and sold, as aforesaid), whereon the residue of the said penalty, or any part thereof, can or may be levied, with the reasonable charges and expenses attending such levy. Dated this* (*a*) —— *day of* ——, [1843].

No. VII.—BODY-WARRANTS.

(A.) Body-warrant by one justice for a full or mitigated penalty, after a common levy-warrant, when no part of the penalty has been recovered.

1. Body-warrant by one justice for a full or mitigated penalty, after common levy-warrant, when no part of penalty has been recovered.

County of ——, *to wit.* } *To G. H. and I. K., officers of Excise, or either of them, and to the gaoler or keeper of the common gaol or house of correction of, for, and within the county, shire, division, city, town, or place, where this warrant shall be executed.*

Whereas E. F. and L. M., Esqrs., two of her Majesty's justices of the peace for the county of ——, *by their warrant under their hands, made and issued within the said county of* ——, *bearing date the* —— *day of* ——, [1843], *did require and command you, the said G. H. and I. K., or either of you, to levy on the goods and chattels of C. D. the sum of* [70*l.* 4*s.* 5*d.*], *being a mitigated penalty recovered against the said C. D. by A. B., officer of Excise, who prosecuted as well for our sovereign Lady the Queen as for himself, for a certain offence committed by the said C. D. against the laws and statutes of Excise, whereof the said C. D. was convicted*

(*a*) See note (*a*), p. 1021.

3. *Proceedings, &c. before justices, &c.*

before and by the judgment of N. O., [Esq.], and P. Q., [clerk], two of her Majesty's justices of the peace for the said county of ——, on the —— day of —— last, with all reasonable charges and expenses attending such levy; and whereas you, the said G. H., by a return in writing made on the said warrant under your hand, bearing date this day, have returned to me, R. S., Esq., one of her Majesty's justices of the peace for the said county of ——, whose hand is hereunto set, that you, the said G. H., have made diligent search for but cannot find (within the jurisdiction in which the said warrant was so issued) any goods or chattels of the said C. D., whereon the said penalty, charges, and expenses, or any part thereof, can or may be levied: Now I, the same justice, do, in her Majesty's name, authorize, require, and command you, the said G. H. and I. K., or either of you, to take and arrest the said C. D., and forthwith to convey him to the common gaol or house of correction of, for, and within the county, shire, division, city, town, or place where you, or either of you, shall so take and arrest the said C. D., and there to deliver him, together with a duplicate of this warrant, to the gaoler or keeper of such gaol or house of correction, there to remain and be kept by such gaoler or keeper until satisfaction shall be made of the said judgment, or until he, the said C. D., shall be ordered by the commissioner (a) of Excise to be liberated or discharged; and all constables and other her Majesty's officers are hereby athorized and required to be aiding and assisting to you in the due execution hereof; and the gaoler or keeper of such gaol or house of correction to which you shall so convey the said C. D., is hereby authorized and required there to receive and take into his custody the said C. D., there to remain and be kept by such gaoler or keeper until satisfaction shall be made of the said judgment, or until he, the said C. D., shall be ordered by the commissioner (a) of Excise to be liberated or discharged. And for your, or any, or either of your so doing, as is before to you respectively directed, this shall be to you, any, or either of you respectively, a sufficient warrant and authority. Given, &c. (b).

(B.) Body-warrant by two justices for residue of a full or mitigated penalty, after a common levy-warrant.

2. The like by two justices, for residue of a full or mitigated penalty.

County of ——, to wit. } *To G. H. and I. K., officers of Excise, or either of them, and to the gaoler or keeper of the common gaol or house of correction of, for, and within the county, shire, division, city, town, or place, where this warrant shall be executed.*

Whereas E. F. and L. M., Esqrs., two of her Majesty's justices of the peace for the county of ——, by their warrant under their hands, made and issued within the said county of ——, bearing date the —— day of ——, [1843], did require and command you, the said G. H. and I. K., or either of you, to levy upon the goods and chattels of C. D., the sum of [70l. 4s. 5d.], being a mitigated (c) penalty recovered against the said C. D. by A. B. officer of Excise, who prosecuted as well for our sovereign Lady the Queen as for himself, for a certain offence committed by the said C. D. against the laws and statutes of Excise, whereof the said C. D. was convicted before and by the judgment of N. O., [Esq.], and P. Q., [clerk], two of her Majesty's justices of the peace for the said county of ——, on the —— day of —— last, with all reasonable charges and expenses attending such levy; and whereas you, the said G. H., by a return in writing made on the said warrant under your hand, bearing date this day, have returned to us, R. S. and T. U., Esqrs., two of her Majesty's justices of the peace for the county of ——, whose hands are hereunto set, that by virtue of the said warrant, you have seized and sold divers goods and chattels of the said C. D., and thereon and thereout have levied the sum of [24l. 3s. 4d.], part of the said penalty, charges, and expenses; and that you, the said G. H., have made diligent search for but cannot find (within the jurisdiction within which the said warrant was so issued) any more or further goods or chattels of the said C. D., beyond the goods and chattels already seized and sold as aforesaid, whereon the residue of the said penalty, charges, and expenses, or any part thereof, can be levied: Now we, the said last-mentioned justices, do, in her Majesty's name, authorize, require, and command you, the said G. H. and I. K., or either of you, to take and arrest the said C. D., and forthwith convey him to the common gaol or house of correction

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(a) If used in England, add an "s" to the word commissioner; if in Scotland or Ireland, insert the words "*and assistant commissioners.*"

(b) See note (a), p. 1024.

(c) If for a full penalty, leave out the word "*mitigated.*"

3. *Proceedings, &c. before justices, &c.*

of, for, and within the county, shire, division, city, town, or place, where you, or either of you, shall so take and arrest the said C. D., and there to deliver him, together with a duplicate of this warrant, to the gaoler or keeper of such gaol or house of correction, there to remain and be kept by such gaoler or keeper, until satisfaction shall be made of so much of the said judgment as still remains unsatisfied, and thereby the whole of the said judgment shall be satisfied, or until he, the said C. D., shall be ordered by the commissioner (a) of Excise to be liberated or discharged; and all constables and others her Majesty's officers are hereby authorized and required to be aiding and assisting to you in the due execution hereof; and the gaoler or keeper of such gaol or house of correction to which you, or either of you, shall so convey the said C. D., is hereby authorized and required there to receive and take into his custody the said C. D., there to remain and be kept by such gaoler or keeper until satisfaction shall be made of so much of the said judgment as still remains unsatisfied, and thereby the whole of the said judgment shall be satisfied, or until he, the said C. D., shall be ordered by the commissioner (a) of Excise to be liberated or discharged. And for your, or any or either of your, so doing, as is before to you respectively directed, this shall be to you, any or either of you respectively, a sufficient warrant and authority. Given, &c. (b).

(C.) Body-warrant granted by one justice for a full or mitigated penalty, after a special levy-warrant, when no part of the penalty has been recovered.

3. Body-warrant by one justice, for a full or mitigated penalty, after special levy-warrant, where no part of penalty has been recovered.

County of ——, to wit. } *To G. H. and I. K., officers of Excise, or either of them, and to the gaoler or keeper of the common gaol, or house of correction of, for, and within the county, shire, division, city, town, or place, where this warrant shall be executed.*

Whereas, on the —— day of ———, [1843], at ———, in the county of ——, C. D., being a person carrying on the trade and business of a [maltster and maker of malt,] the same being a trade and business under and subject to the laws and statutes of Excise, was duly convicted by and before E. F., [Esq.], and L. M. [clerk], two of her Majesty's justices of the peace in and for the said county of ——, by the judgment of the said justices, of an offence heretofore committed in the said county by him, the said C. D., being, at the time of the committing of such offence, a person carrying on the said trade and business, and the same trade and business being then under and subject to the laws and statutes of Excise, against a certain act of Parliament relating to the revenue of Excise, in the mitigated (c) penalty of [70l. 4s. 5d.] incurred by him for the said offence, under and by virtue of the said act, which said penalty was, by the said conviction and judgment of the said justices, recovered against the said C. D. by A. B. officer of Excise, who prosecuted as well for our sovereign Lady the Queen as for himself in that behalf; and whereas the said justices, by their warrant under their hands, made and issued within the said county, bearing date the —— day of ———, [1843], did require and command you, the said G. H. and I. K., or either of you, that, upon all the [malt], and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a [maltster and maker of malt], had been carried on by the said C. D., in the custody or possession of the said C. D., or of any person or persons, to the use of or in trust for the said C. D., and upon all the [malt], and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a [maltster and maker of malt] had been carried on by the said C. D., which were in his custody or possession when the said penalty was incurred, into whose hands soever the same should be claimed, and also upon all the goods and chattels of the said C. D., you, or either of you, should levy the said penalty of [70l. 4s. 5d.], so recovered against the said C. D. by the said A. B., as aforesaid, whereof the said C. D. stood convicted before them, the said justices, as in that behalf aforesaid, with all reasonable charges and expenses attending such levy; and whereas you, the said G. H., by a return in writing, made on the said warrant under your hand, bearing date this day, have certified to me, R. S., Esq., one of her Majesty's justices of the peace for the said county of ——, whose hand is hereunto set, that you, the said G. H., have made diligent search for, but cannot find (within the jurisdiction in which the

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(a) See note (a), p. 1024.
(b) See note (a), p. 1024.
(c) See note (c), preceding page.

said warrant was so issued) any such [malt], materials, preparations, utensils, or vessels, as are in and by the said warrant mentioned and directed to be levied on, or any goods or chattels of the said C. D., whereon the said penalty, charges, and expenses, or any part thereof, can be levied: Now I, the same justice, do, in her Majesty's name, authorize, require, and command you, the said G. H. and I. K., or either of you, to take and arrest the said C. D., and forthwith to convey him to the common gaol or house of correction of, for, and within the county, shire, division, city, town, or place, where you, or either of you, shall so take and arrest the said C. D., and there to deliver him, together with a duplicate of this warrant, to the gaoler or keeper of such gaol or house of correction, there to remain and be kept by such gaoler or keeper until satisfaction shall be made of the said judgment, or until he, the said C. D. shall be ordered by the commissioner (a) of Excise to be liberated or discharged. And all constables and other her Majesty's officers are hereby authorized and required to be aiding and assisting to you in the due execution hereof; and the gaol or keeper of such gaol or house of correction, to which you shall so convey the said C. D., is hereby authorized and required there to receive and take into his custody the said C. D., there to remain and be kept by such gaoler or keeper until satisfaction shall be made of the said judgment, or until he the said C. D. shall be ordered by the commissioner (a) of Excise to be liberated or discharged. And for your, or any or either of your, so doing, as is before you respectively directed, this shall be to you, any or either of you respectively, a sufficient warrant and authority. Given, &c. (b).

3. *Proceedings, &c. before justices, &c.*

(D.) Body-warrant granted by one justice for the residue of a full or mitigated penalty, after a special levy-warrant.

4. The like, for residue of a full or mitigated penalty, after special levy-warrant.

County of ——, to wit. } *To G. H. and I. K., officers of Excise, or either of them, and to the gaoler or keeper of the common gaol or house of correction of, for, and within the county, shire, division, city, town, or place, where this warrant shall be executed.*

Whereas, on the —— day of ——, 1843, at ——, in the county of ——, C. D., being a person carrying on the trade and business of a [maltster and maker of malt], the same being a trade and business under and subject to the laws and statutes of Excise, was duly convicted by and before E. F., [Esq.], and L. M., [clerk], two of her Majesty's justices of the peace in and for the said county of ——, by the judgment of the said justices, of an offence heretofore committed in the same county by him, the said C. D., being then a person carrying on the said trade and business, and the same trade and business being then under and subject to the laws and statutes of Excise, against a certain act of Parliament relating to the revenue of Excise, in the mitigated penalty of [70l. 4s. 5d.], incurred by him for the said offence, under and by virtue of the said act, which said penalty was, by the said conviction and judgment of the said justices, recovered against the said C. D. by A. B., officer of Excise, who prosecuted as well for our sovereign Lady the Queen, as for himself in that behalf. And whereas the said justices, by their warrant, under their hands, made and issued within the said county, bearing date the —— day of ——, one thousand eight hundred and forty ——, did require and command you the said G. H. and I. K., or either of you, that, upon all the malt, and all the materials, preparations, utensils, and vessels for making thereof, or by which the trade and business of a maltster and maker of malt had been carried on by the said C. D., in the custody or possession of the said C. D., or of any person or persons to the use of or in trust for the said C. D., and upon all the malt, and all the materials, preparations, utensils, and vessels for making thereof, or by which the said trade and business of a maltster and maker of malt had been carried on by the said C. D., which were in his custody or possession when the said penalty was incurred, into whose hands soever the same should have afterwards come, and by what conveyance or title soever the same should be claimed: and also upon all the goods and chattels of the said C. D., you or either of you should levy the said penalty of one hundred pounds —— shillings and —— pence, so recovered against the said C. D. by the said A. B. as aforesaid, whereof the said C. D. stood convicted before them the said justices as in that behalf aforesaid, with all reasonable charges and expenses attending such levy. And whereas you the said G. H., by a return in writing made on the said warrant under your hand, bearing date this day, have certified to me, W. M., Esq., one of her Majesty's justices of the peace for the said county of ——, whose hand is hereunto set, that by

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(a) See note (a), *ante*, p. 1024. (b) See note (b), p. 1024.

3. *Proceedings, &c. before justices, &c.*

virtue of the said warrant, you have seized and sold divers quantities of the malt, materials, preparations, vessels, utensils, goods, and chattels in the said warrant in that behalf mentioned, and thereon and thereout have levied the sum of twenty pounds —— shillings and —— pence, part of the said penalty, charges, and expenses; and that you, the said G. H. and I. K., have made diligent search for, but cannot find, within the jurisdiction within which the said warrant was so issued, any more or further such malt, materials, preparations, vessels or utensils, as are in the said warrant in that behalf mentioned, or any more or further goods and chattels of the said C. D., (beyond the malt, materials, preparations, vessels, utensils, goods, and chattels already seized and sold as aforesaid), whereon the residue of the said penalty, charges, and expenses, or any part thereof can be levied. Now, I, the said last-mentioned justice, do, in her Majesty's name, authorize, require, and command you, the said G. H. and I. K. or either of you, to take and arrest the said C. D., and forthwith to convey him to the common gaol or house of correction, of, for, and within the county, shire, division, city, town, or place, where you, or either of you, shall so take and arrest the said C. D., and there to deliver him, together with a duplicate of this warrant, to the gaoler or keeper of such gaol or house of correction, there to remain and be kept by such gaoler or keeper, until satisfaction shall be made of so much of the said judgment as still remains unsatisfied, and thereby the whole of the said judgment shall be satisfied, or until the said C. D. shall be ordered by the commissioner (a) of Excise, to be liberated or discharged. And all constables and other her Majesty's officers, are hereby authorized and required to be aiding and assisting to you in the due execution hereof; and the gaoler or keeper of such gaol or house of correction, to which you or either of you shall so convey the said C. D., is hereby authorized and required there to receive and take into his custody the said C. D., there to remain and be kept by such gaoler or keeper, until satisfaction shall be made of so much of the said judgment as still remains unsatisfied, and thereby the whole of the said judgment shall be satisfied, or until the said C. D. shall be ordered by the commissioner (a) of Excise, to be liberated or discharged; and for your, or any or either of your so doing, as is before you respectively directed, this shall be to you, or any or either of you respectively, a sufficient warrant and authority. Given, &c.

*** In order to execute this warrant out of the jurisdiction of the justice granting it, in any other county, shire, division, city, town, or place, it is necessary that a justice of the peace of such other county, shire, division, city, town, or place, should indorse his name on such warrant, and it will be necessary to add, after his signature, "*one of Her Majesty's justices of the peace for the county of* ——," [*as the case may be*], but it is not necessary to prove, in order to justify his indorsing such warrant, the handwriting of the justice granting the same.

(E.) Demand of payment of duty in danger of being lost.

To Mr. W. M., maltster.

Demand by collector of payment of duty in danger of being lost.

The sum of one hundred pounds, five shillings, and sixpence, having been charged upon and incurred by you, as duties on malt imposed by the statute in that case made and provided, I, W. P., (the collector of Excise for R—— Collection, in whose collection the trade and business of a maltster was carried on by you, at the time such duties were charged upon and incurred by you), do hereby demand of you, under order in that behalf, of the commissioners (b) of Excise, payment forthwith to me, for Her Majesty's use, of the said sum of one hundred pounds, five shillings, and sixpence; and if the same is not forthwith paid and cleared off according to this demand, you will forfeit and lose double the value thereof. Dated this —— day of ——, [1843].

(To be signed) *W. P.*
Collector of Excise for R—— Collection.

*** This demand may be made either personally of the trader, or be left at his dwelling-house, or on the premises where the duty or duties demanded were charged or incurred.

(a) If used in England, add an "*s*" to the word "*commissioner*," and dash up the blank. If used in Scotland or Ireland, insert the words "*and assistant commissioners.*"

(b) If used in Scotland or Ireland, cancel the "*s*" in the word "*commissioners*," and insert "*and assistant commissioners.*"

To Mr. W. M., maltster.

The sum of one hundred pounds, five shillings, and sixpence, having been charged upon and incurred by you, as duties on malt, imposed by the statute in that case made and provided, I, W. B., officer of Excise, (authorized and directed in that behalf by the collector of Excise, in whose collection the trade and business of a maltster was carried on by you, at the time such duties were charged upon and incurred by you, and one of the officers of Excise in the said collection), do hereby demand of you (under order in that behalf of the commissioners of Excise to the said collector, and by authority and direction of the said collector to me), payment forthwith to me of the said sum of one hundred pounds, five shillings, and sixpence; and if the same is not forthwith paid and cleared off according to this demand, you will forfeit and lose double the value thereof. Dated this —— day of ——, [1843].

(To be signed) *W. B.*
Officer of Excise.

Demand by officer authorized by collector, of payment of duty in danger of being lost.

(F.) Commitment.

To M. S., and to the Keeper of the House of Correction at ———, in the County of ———.

County of ——, } *Whereas, A. G., of ——, in the county of ——, is, and stands convicted this day, before me, H. G., Esq., one of Her Majesty's justices of the peace in and for the said county of , for that one G. H., being an officer of Excise, did, on the —— day of ——, in the year of our Lord ——, at ———, in the said county of ———, discover and find in a certain private and unentered place, manufacturing, and in the course of manufacturing, certain goods and commodities, for and in respect whereof a duty of Excise is imposed, and certain materials and preparations for manufacturing such goods and commodities, to wit, spirits, wort, and wash, made from melasses, and molasses, malt, corn, and grain, and did at the same time discover in and about such private and unentered place, the said A. G., knowingly aiding, assisting, and concerned in the manufacturing such goods and commodities, contrary to the form of the statute in that case made and provided, whereby he, the said A. G., hath forfeited and lost the sum of thirty pounds. And whereas the said A. G. hath refused and neglected to pay the said sum of thirty pounds into the hands of the said W. L., being such officer of Excise as aforesaid, and who conveyed the said A. G. before me, in pursuance of the said statute, charged with the offence aforesaid—These are therefore to require you, the said M. S., to convey the said A. G. to the house of correction at ———, in the said county of ———, and to deliver him to the keeper thereof, together with this warrant; and I do hereby command you, the said keeper, to receive the said A. G. into your custody in the house of correction, there to remain, and be kept to hard labour for the space of three calendar months, to be reckoned from the date hereof, or until (during the said three months) he shall have paid the said sum of thirty pounds; and for so doing, this shall be your sufficient warrant. Given, &c.*

Commitment of a person found on or about an unentered Excise manufactory, aiding, assisting, and concerned therein.

(G.) Affidavit to obtain Search-warrant.

County of ——, to wit. } *W. L., of ——, in the county of ———, officer of Excise, maketh oath and saith, that he, this deponent, hath cause to suspect, and doth suspect, that a large quantity of British spirits, the same being goods and commodities forfeited under and by virtue of a certain act of Parliament relating to the revenue of Excise, are deposited or concealed in some place or places, in or about the house, yards, gardens, or outhouses, thereunto belonging, of W. M., situate at ———, in the county of ———, for that he, this deponent (a), was this morning informed by a person that he has known for some time, that he, (the said person), last night assisted in conveying from a distillery to the said house of the said W. M., about twenty gallons of British spirits, in three casks, and deposited one of such casks in an outhouse in the yard at the back of the house, and the other two in the cellar of the said house. And this deponent lastly says, that he believes the said information is true.*

Sworn at ———, the ——— day of ——, [1843], before me, A. B. }

Affidavit to obtain search-warrant.

(a) Set forth the ground of suspicion; and, if arising from information, add "*and this deponent lastly says, that he believes the said information is true.*"

3. *Proceedings, &c. before justices, &c.*

Search-warrant.

(II.) Search-warrant.

County of ——, to wit, } *Whereas, W. L., officer of Excise, hath this day made oath before me, one of her Majesty's justices of the peace in and for the county of ——, that he hath cause to suspect, and that he does suspect that (a) a large quantity of British spirits, the same being goods and commodities forfeited under and by virtue of a certain act of Parliament relating to the revenue of Excise, are deposited and concealed in and about the house of W. M., and the yards, gardens, buildings, and outhouses, thereunto belonging, situate at ——, in the said county of ——, yeoman, setting forth in and by his said oath the ground of his suspicion, and the same appearing to me to be reasonable ground of suspicion, I therefore, by virtue of the power and authority to me given, do judge it reasonable, and do, by this present warrant under my hand, authorize and empower the said W. L., by day ~~or by night~~ (but if between the hours of eleven of the clock at night and five in the morning, then in the presence of a constable or other lawful officer of the peace,) to enter into every place in and about the said house, yards, gardens, buildings, and outhouses, thereunto belonging, and to seize and carry away all such* [insert the articles suspected to be deposited] *large quantity of British spirits, and all other goods and commodities so forfeited as aforesaid, that he shall there find deposited and concealed. And all constables and other her Majesty's officers, are hereby authorized and required to be aiding and assisting to him in the execution hereof: and for so doing this shall be to him and every of them a sufficient warrant. Given, &c.*

Excommunication. *See "Church."*

Execution.

What.

EXECUTION is the last performance of an act, as of a judgment, &c. It is the obtaining possession of any thing recovered by judgment of law. (1 *Inst.* 289).

How put in force.

Execution is in general put in force by a judicial writ, grounded on the judgment of the court from whence it issues. But, in case of life, the court may command execution to be done, without any writ. (2 *Hawk.* c. 51, s. 4; *Finch*, 478).

On a peer.

In fixed and stated judgments, the law makes no distinction between a peer and a commoner, or between a common and ordinary case, and one attended with extraordinary circumstances; for which reason it was adjudged in *Felton's case*, who murdered the Duke of Buckingham, that the court could not order his hand to be cut off, nor make it part of the sentence that his body should be hanged in chains, but that the body after execution, being at the King's disposal, might be hung in chains, or otherwise ordered as the King should think fit. (2 *Hawk.* c. 48, s. 2).

Manner of.

As to the manner of an execution, it cannot be lawfully executed by any but the proper officer, the sheriff or his deputy. (2 *Hawk.* c. 51, s. 6; 2 *Hale*, 411).

The execution must be done pursuant to the judgment. (2 *Hale*, 411).

The sheriff cannot alter the execution; if he doth, it is felony, and some say murder. (2 *Hale*, 411; *Co. P. C.* 211).

Pardon.

Though the Queen cannot alter the judgment, she may remit a part of it; as, in treason, she may pardon all but the beheading. (2 *Hale*, 412). Such pardon must be under the great seal. (*Id. Fost.* 269). See further, tit. "*Pardon*," *Vol. V.*

The execution of persons under the age of discretion is usually respited, in order to obtain a pardon. (1 *Hawk.* c. 1, s. 8).

Infants.

It is clear that if a man, condemned to be hanged, come to life after he be hanged, he ought to be hanged again; for the judgment was not executed till he was dead. (2 *Hawk.* c. 51, s. 7).

Coming to life after hanging.

Where a person attainted hath been at large after his attainder, and afterwards is brought into court and demanded why execution should not be awarded against him, if he deny that he is the same person, it shall immediately be tried by a jury returned for that purpose. (2 *Hawk.* c. 51, s. 3; *vide Ratcliff's case, Fost.* 40, 41; 1 *Bla. R.* 3, S.C.; but see *Duberley* v. *Gunning, Peake's C. N. P.* 98).

Person attainted at large.

As to the execution of murderers, see tit. "*Homicide,*" *Vol. III.*

Of murderers.

By the 5 Will. IV. c. 1, the sheriffs of the county of the city of Chester are to execute criminals condemned to die for offences committed in the county of Chester, and by sect. 2, the judge before whom any criminal shall be convicted, may make an order upon the sheriff of the county to execute such criminal in any place not within his jurisdiction.

As to the proof of execution of a deed, see "*Evidence,*" *ante,* 411.

Proof of execution of deed, &c.

Exemplification *of Record, &c. Proof by, see ante,* p. 391.

Exigent, *Process of, see post, "Process," Vol. V.*

Exile. *See "Transportation," Vol. VI.*

Ex Officio. *Proof of Matter ex officio noticed by the Courts, ante,* p. 359;—*Informations ex officio, see "Informations," Vol. III.*

Expenses *of Prosecutor, &c. see ante, "Costs," "Fees," post.*

Expenses *of Witnesses, see ante,* p. 461.

Explosive Substances, *Injuries to the Person. See "Malicious Injuries to the Person," Vol. V.*

Exporting Tools, *&c. see "Manufactures," Vol. III.;—As to Exportation in General, see ante, "Excise."*

Expulsion. *"Forcible Entry," Vol. III.*

Extortion.

As to threats to extort.

AS to the offence of extortion by threats, see "*Threats*," *Vol. VI.*

What amounts to the offence of extortion.

It is said that extortion, in a large sense, signifies any oppression under colour of right; but that, in a strict sense, it signifies the taking of money, by any officer, by colour of his office, either where none at all is due, or not so much is due, or where is not yet due. (1 *Hawk.* c. 68, s. 1; *Co. Lit.* 368. *b.*; *per Dallas*, J. *Stevens* v. *Rothwell*, 3 *B. & B.* 145; 6 *Moo.* 338, S. C.)

At common law.

Extortion was, and still continues, a high misdemeanor at common law, and punishable by fine and imprisonment; (*Co. Lit.* 368. *b.*); and, therefore, an indictment at common law lies against a judge for taking a fee for his judgment, an officer for receiving more than the usual fee, a ferryman for taking more than is due to him by prescription, or a sheriff for refusing to execute process till his fees are paid him. (*Com. Dig. Extortion*, A).

By stat. 3 Edw. I, c 26.

And by stat. 3 Edw. I. c. 26, (which is only in affirmance of the common law), "*no sheriff, nor other the King's officer, shall take any reward to do his office, but shall be paid of that which they take of the King; and he that so doth, shall yield twice as much, and shall be punished at the King's pleasure.*"

By what officers.

No sheriff nor other the King's officer.]—Under these words, the law beginning with the *sheriffs*, are understood escheators, coroners, bailiffs, gaolers, and other *inferior officers* of the Queen, whose offices were instituted before the making of this act, which do any way concern the administration or execution of justice, or the common good of the subject, or for the Queen's service. (2 *Inst.* 209).

Magistrates.

Also the justices of the peace, whose office was instituted after this act, are bound by their oath of office to take nothing for their office of justice of the peace to be done, but of the King, and fees accustomed, and costs limited by statute.

All public officers.

And generally, no public officer shall take any other fees or rewards for doing any thing relating to his office, than some statute in force gives him, or else as hath been anciently and accustomably taken; and if he do otherwise, he is guilty of extortion. (*Dalt.* c. 41; and see 1 *Russ.* 222).

Collector of duties.

But where a person was appointed collector of certain duties under 43 Geo. III. c. 99, by the proper constituted authorities, and considered himself, and was considered by those authorities, to be such collector, but whose appointment was informally made, it was decided that he could not be indicted at common law for the receipt of duties *by colour and pretence of* being collector of such duties, though the money was fraudulently collected and misapplied by him, because he was in fact appointed collector, and in that character received the money. (*R.* v. *Dobson and another*, 7 *East*, 218).

A collector of post-horse duty demanded of A. a sum of money, alleging that A. had let out horses for hire, without payment of the duty. A. denied that he had done so, and gave the collector a promissory note for 5*l.*, the amount of which, after it became due, was paid by A. to the collector, who handed it over to his principal, the farmer of the post-horse duties. Held, that this was an extortion in the collector, and that his having paid the money over to his principal made no difference. (*R.* v. *Higgins*, 4 *C. & P.* 247).

Toll collectors.

As to extortion by tollgate-keepers, see "*Highways, Turnpike*," *Vol. III.*

Coroner.

A coroner is guilty of extortion if he refuses to take the view of a dead body till the fees are paid. (1 *Russ.* 145. See *ante*, "*Coroner.*")

So, if an undersheriff gets his fees by refusing to execute process till they are paid, or takes a bond for his fee before execution is sued out. (1 *Russ. Ib.*) *Extortion.* Undersheriff.

So, if a miller or ferryman, where custom has ascertained the amount of the respective tolls, takes more than the custom warrants, it is extortion. (1 *Russ. Ib.*) Ferrymen.

As to extortion by innkeepers, see "*Alehouse*," *Vol. I.* Innkeepers.

A sheriff is not liable to be indicted for the extortion of his officer; (*Saunderson* v. *Baker*, 3 *Wils.* 316); but he may be sued for it. (*Woodgate* v. *Knatchbull*, 2 *T. R.* 148). Sheriff not liable for bailiff's acts.

There are no accessaries in extortion. (*R.* v. *Leggen*, 1 *Str.* 75). Accessaries.

Shall take any reward.]—Therefore, by this statute, they can at this day take no more for doing their office than hath been since allowed to them by authority of Parliament. (2 *Inst.* 210). What may be taken.

All prescriptions which have been contrary to this statute, and to the common law, in affirmance of which it is made, have been always holden to be void. (1 *Hawk.* c. 68, s. 2).

It is equally extortion, where a greater fee is exacted than what is legally due: as where money is exacted as a fee, where none whatever is payable. (*Reg.* v. *Baynes*, 2 *Salk.* 680; 2 *Ld. Raym.* 1199, 1265, S. C.; 1 *Hawk.* c. 68, s. 1).

It has been resolved, that a promise to pay them money for doing of a thing, which the law will not suffer them to take any thing for, is merely void. (1 *Hawk.* c. 68, s. 2; *Stotesbury* v. *Smith*, 2 *Burr.* 924; 1 *Bl. Rep.* 204, S. C.)

To do his office.]—It is not said, that he shall take no reward generally, but no reward to do his office: thus the fee of 20*d.*, called bar fee, time out of mind, taken by the sheriff of every prisoner that is acquitted, is not against this statute; for it is not taken for doing his office. (2 *Inst.* 210; but see tit. "*Gaols*," *post*, *Vol. III.*) For what.

By 55 Geo. III. c. 50, s. 4, prisoners charged with felony or misdemeanor, against whom no indictment is found, or who are acquitted on their trial, shall be discharged without payment of any fee whatever.

By s. 9, any clerk of assize, clerk of the peace, &c. or their deputies, or other officers, exacting such fees, are rendered incapable of holding their offices, and are declared guilty of a misdemeanor. See *post*, "*Gaols*," *Vol. III.* Exacting them, misdemeanor.

But there seems to be no necessity for this distinction; for it cannot be intended to be the meaning of the statute to restrain the courts of justice, in whose integrity the law always reposes the highest confidence, from allowing reasonable fees for the labour and attendance of their officers; the chief danger of oppression is from officers being left at their liberty to set their own rates on their labour, and make their own demands; but there cannot be so much fear of these abuses, while they are restrained to known and stated fees, settled by the discretion of the courts, which will not suffer them to be exceeded, without a proper resentment. (1 *Hawk.* c. 68, s. 3; 2 *Inst.* 210, 211). Regular fees allowable.

But, in the ecclesiastical court, a person was libelled against for fees, and, upon motion, a prohibition was granted, for that it was holden that no court had a power to establish fees; the judge of a court may think them reasonable, but that is not binding; but if, on a *quantum meruit* a jury think them reasonable, then they become established fees. (*Ballard* v. *Gerrard*, 1 *Salk.* 333; *Hardr.* 351). Courts cannot establish fees at their discretion.

The fees in sessions, for traversing, trying, or discharging indictments, discharging recognizances, and the like, do vary according to the different customs in different places. (*Dalt.* c. 41).

Shall yield twice as much.]—At the common law this offence is severely punishable at the Queen's suit by fine and imprisonment, and also by a removal from the office in the execution whereof it was committed. And this statute doth add a greater penalty than the common law did Punishment and penalty.

Extortion.

give; for hereby the plaintiff shall recover his double damages. (2 *Inst.* 210; 1 *Hawk.* c. 68, s. 5).

Before whom tried.

At the King's pleasure.]—That is, by the King's justices, before whom the cause depends. (2 *Inst.* 210; *R.* v. *Loggen*, 1 *Stra.* 75).

Venue.

Venue.]—And by 31 Eliz. c. 5, s. 4, actions on informations for extortion may be laid in any county. It has been said, this section applies to indictments. (1 *Hawk.* c. 68, s. 6, but this is not free from doubt, see 1 *Russ.* 146).

Indictment for.

Indictment for.]—Several defendants may be jointly indicted when no fee was due. (*R.* v. *Atkinson*, 2 *Ld. Raym.* 1248; 1 *Salk.* 382, S. C.; 3 *Leon.* 268; *Com. Dig. Extortion*, (C); *E. I. Comp.* v. *Atkins*, 1 *Stra.* 175; *Comyns*, 347, S. C.) The time of the offence must be alleged. (*R.* v. *Roberts*, 4 *Mod.* 101, 103; 3 *Salk.* 198, S. C.) The indictment must state a sum which the defendant received, and it will not be sufficient to aver that he did receive a gift or reward, without specifying value, (*Davy* v. *Baker*, 4 *Burr.* 2471; 2 *Leach*, 794), though it is not material to prove the exact sum as laid in the indictment. (*R.* v. *Burdett*, 1 *Ld. Raym.* 149; *R.* v. *Gilham*, 6 *T. R.* 267; *R.* v. *Higgins*, 4 *C. & P.* 247). So, in an information, though several sums and specific persons are stated to have been the objects of the defendant's extortion, if it conclude with a general charge, of which he is found guilty, that, under colour of his said office he did illegally cause his agents to receive and demand of *several other persons several other sums of money*, under pretence of weighing and examining their several weights and measures, the whole will be vitiated and judgment will be arrested. (*R.* v. *Robe*, 2 *Stra.* 999). If the indictment charge that the defendant, as bailiff of a hundred, under colour of his office, took a sum of money, without showing more particularly by what pretence it was taken, it will be good at least after verdict; for, perhaps, he might claim it generally as being due to him as bailiff, in which case the demand could not be otherwise stated. (*R.* v. *Cover*, 1 *Sid.* 91). Where nothing at all was due, that fact ought to be averred, and where any thing was due, the sum which might have been lawfully taken must be expressed. (3 *Leon.* 268; *Com. Dig. Extortion*, (C)). The court will not quash an indictment for extortion upon motion, though it appear to be defective, but leave the party to demur. (*R.* v. *Wadsworth*, 5 *Mod.* 13).

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1). Commitment of a constable for extortion.

Commencement as *ante*, p. 346, form (No. 2).]—*on &c. at &c. in the said county, being then a constable, unlawfully, corruptly, and by pretext and colour of his said office, by extortion did extort and receive of and from one C. D., then in the custody of the said A. B., the sum of five shillings, as and for a fee due to him the said A. B. as such constable. And you, the said keeper, &c.* [Conclude as *ante*, p. 346, form (No. 2)]

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(2). Indictment for extortion in a gaoler.

——. (venue). *The jurors for our Lady the Queen upon their oath present, that A. O., late of , in the said county, yeoman, on the day of , in the year of the reign of , was taken up on suspicion of having committed a certain felony, by , constable of , in the said county, by virtue of a warrant directed to the said , under the hand and seal of W. D., Esquire, then and yet one of the justices of our sovereign Lady the Queen assigned to keep the peace in the said county, and was on the same day in the year aforesaid committed by him, the said W. D., to A. G., keeper of the gaol of our said sovereign Lady the Queen at , in the said county, under the custody of him the said A. G. to be safely kept, upon suspicion of the felony aforesaid, and the said A. O. was detained in that prison under the custody of the said A. G. from the time that he was committed to the said prison for one month from thence next ensuing, upon suspicion of the said felony; nevertheless the said A. G. being such keeper as aforesaid, in nowise regarding the statute in that case made, and the penalty therein contained, did on the day of at aforesaid, in the said county, demand and receive pounds of lawful money of Great Britain of and from the said A. O. for ease and favour in the said gaol for the said time, in contempt of*

vereign Lady the Queen, and against the form of the statute aforesaid, and peace of our said sovereign Lady the Queen, her crown and dignity.

—. (venue). *The jurors for our Lady the Queen upon their oath present, that in the said county, on the day of , in the year of the reign of , e said county, by pretext and colour of his said office, did unjustly and by ke and extort five shillings of one A. I. of , in the said county, one of ers qualified to serve upon juries in the said county, to excuse the said attending or appearing at the assizes that were then next to be d for the said county, when in fact the said A. I. was not returned by the e said county in any panel of jurors, and also when indeed no such sum s due to the said C. D. for his fee for excusing the attendance or appearance A. I. at the assizes aforesaid; to the evil example of all others, to the e of him the said A. I., and against the peace of our said Lady the Queen, id dignity.*

(3). Indictment for extortion by a bailiff.

orm of indictment against a constable for extortion, *Jervis . 9th ed.* 590.

Against a constable.

END OF VOL. II.

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